



**PROJECT FB/IRQ/08/007
PRIVATE SECTOR DEVELOPMENT
PROGRAMME FOR IRAQ**

**LEGISLATIVE ASSESSMENT AND DRAFTING REPORT FOR PROPERTY RIGHTS
RELATED TO LAND REGIME**

CONDUCTED AND PREPARED BY UN-HABITAT

Executive Summary

The Iraq Government with the support of the United Nations is concentrating efforts to create and enable an effective, coherent and comprehensive framework for private sector development in Iraq.

One component of the project “Private Sector Development Programme for Iraq” is related to strengthening the legislative framework and national capacities for the development of private sector policies and the economy as a whole. One of the main activities covered by this component is a legislative assessment exercise which will provide the basis for the drafting of legislation and the provision of capacity building on legislative and institutional aspects related to private sector development in Iraq.

The UN team and the Task Force Working Group for Legislation identified thirteen legal core areas to be assessed. These core areas are: 1. Basic Legal Framework (Constitution and civil code); 2. Commercial status; 3. Investment regime; 4. Public Procurement; 5. Privatization; 6. Public Private Partnerships; 7. Litigation (Conciliation and Arbitration) promotion; 8. Labor code; 9. Agriculture regime; 10. Intellectual property rights; 11. Property rights related to land regime; 12. Taxation and customs; 13. Banking. The UN agencies responsible for the legislative assessment under the leadership of UNIDO are: UNDP, ILO/UNOPS, FAO, UN-HABITAT and UNIFEM.

This report represents the legislative assessment and drafting laws for core area Property Rights Related to Land Regime prepared by UN-HABITAT.

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* This document has not been formally edited.

ABBREVIATIONS

CPA	Coalition Provisional Authority
CRRPD	Commission for Resolution of Real Property Disputes
GCAL	General Commission of Agricultural Lands
GDPP	General Directorate for Physical Planning
IDP	internally displaced person
IPCC	Iraqi Property Claims Commission
KRG	Kurdistan Regional Government
MoA	Ministry of Agriculture
MMPW	Ministry of Municipalities and Public Works
MoF	Ministry of Finance
PSDP-I	Private Sector Development Program - Iraq
RERD	Real Estate Registration Department
RCC	Revolutionary Command Council
UN-HABITAT	United Nations Human Settlements Program

CAVEAT

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INTRODUCTION

Private Sector Development Programme for Iraq (PSDP-I)

One of the goals of PSDP-I is to strengthen the legislative framework and national capacities for the development of private sector policies and the economy as a whole. A legislative, institutional and sectoral needs assessment exercise is included in order to establish the ground for building sound legislative and institutional frameworks fostering private sector development. A core area for the legislative assessment, as identified by the Task Force Working Group on Legislation, is Property Rights (related to Land Regime). UN-HABITAT has been assigned the task of assessing the legislative framework for this core area.

In connection with its participation in PSDP-I, UN-HABITAT supports the Working Group on Land Tenure and Utilisation, established under Prime Minister Order 59 for 2010. The mandate of the Working Group is to improve land management systems in Iraq, with a particular focus on improving access to land for economic development purposes. The Working Group decided that meaningful land reforms in Iraq could benefit from an underlying, inclusive land management policy. This issue was discussed among Iraqi officials at a conference in May titled “Towards a Land Management Policy for Iraq” co-hosted by UN-HABITAT and the World Bank.

Scope of Land Policy and Legislation

Under the 2003 *Constitution*, the federal government has no jurisdiction on land issues in the Kurdistan region. We expect therefore that national land policies will not be applicable to Kurdistan. The legislative assessment and recommendations should be understood as relating only to the rest of Iraq.

Overview of Land and Property Problems

Iraq is facing huge problems in land and property issues. The problems will not be solved by legislative reform. In fact, many are connected to weak implementation and enforcement of existing sound laws, or to outright illegality. On the other hand, legislative reform is needed to support the other measures that are necessary to address the problems.

There is a shortage of adequate housing. Two million dwellings are needed by 2016. Supplying this need is constrained by affordability, the absence of housing finance, a backlog in the provision of urban infrastructure, the disrepair of existing infrastructure, difficulty in converting agricultural land to urban uses, and the lack of established procedures for improving or redeveloping unplanned settlements.

There are an estimated 2.7 million internally displaced persons (IDPs), plus a comparable number of people who have left the country after abandoning their homes. Vacant properties have been occupied by IDPs, and also by opportunists. State land has been occupied informally. According to the Office of the UN High Commissioner for Refugees (UNHCR), there are upwards of 400,000 people living in 351 squatter settlements. They include people who relocated for economic reasons.

The legacy of the Saddam Hussein era is still felt. Although a quasi-judicial system was set up to deal with the claims of those who were dispossessed, there is a backlog of claims, as well as lack of enforcement of adjudicated claims.

There are problems with land administration. Although the real estate registration system is considered to be reasonably effective for users, the benefits of registration are not obvious to all. There is

undocumented buying and selling of land, including unapproved subdivision of parcels. The registration system is paper-based, with no aggregated information. Development, and even allocation of state land, can take place without regard to master plans. Building without or contrary to permits is common. Municipalities have weak capacity and no financial resources for land administration and urban infrastructure.

Assessing Legislation on Property Rights Related to Land Regime

The overall aim of legislation on property rights related to land regime should be to facilitate an increased accessibility to affordable and appropriately located land with adequate security of title and occupation and adequate development rights to promote private sector development. The legislation should ensure that the institutions and instruments providing for land administration and management and the operation of land markets are based on the principles of equity, efficiency, flexibility, and participation.

Constraints on private sector development should not in themselves support recommendations for changes in the laws. Not only must there be adequate regulation on environmental, urban planning, and health and safety grounds, but the rights and interests of the less powerful must be protected. For example, in a narrow view of support for private sector development, a summary method of extinguishing the claims of smallholders to enable the consolidation of land for development may be attractive. On a wider view, strengthening their tenure, or even granting tenure to informal occupants, may be sounder public policy. It will promote private sector development in accordance with principles of equity and participation.

Thus an inclusive view of what constitutes the private sector is called for. Besides investors (foreign and domestic) it includes residents, farmers and small business. It extends to the informal sector, including those who occupy land without formally-recognized rights.

In many countries, including developed ones, certain constraints on private land markets are accepted. They may be embedded in culture, religion or national psyche. They can cover such aspects as communal rights to land, inheritance law and restrictions on foreign ownership. Commentators may identify such constraints, but it is not useful simply to recommend their removal. They are matters of considered policy, and it is more appropriate to think about means of addressing the issues raised by their existence.

What the Private Sector and Economic Development Need

Clear, secure land tenure: Private rights in land must include minimal restrictions on sale, lease, mortgage or granting other rights. There must be adequate rights to use the land, including building. These fundamentals underlie the operation of mortgage financing, which is a cornerstone of economic development in most developed countries. It is important to note that clear, secure land tenure is possible with tenure that is less than absolute ownership.

Protection from arbitrary state intervention: This protection is of two kinds. The state's power to expropriate must be circumscribed by law and transparent procedure, and the taking of land must be fully compensated. Restrictions on the owner's rights, such as land use requirements, must not be arbitrary. They must be law-based and, again, imposed under transparent procedures.

A sound land administration system. The efficient operation of private land markets depends on a well-functioning administrative and institutional system operated by the state, including land registration, urban planning, land use control, land taxation and land information. Transaction costs must not be too high, or else the private sector will avoid using the system.

Access and equal opportunity: The benefits of secure land tenure must be available to all. Access to the land registration system must not be constrained by high transaction costs. The land administration must operate on good governance principles. There must be equal access to information and to state land that is being made available. This means that state land management and allocation must be open and transparent. Government decisions must be based on policy.

Limitations of the Assessment of Land Legislation

The land regime is of a different order of significance and complexity than the other core areas under assessment. There are many aspects to the land regime, all of which are interconnected, and many of which connect with other core areas. The relationship between land regime and private sector development involves many more elements than, for example, that between intellectual property and private sector development. There are more laws and institutions and many more factors involved.

Laws concerning land are often closely linked to other aspects of public administration. Important examples are land taxes and the role of local government. Public finance and decentralisation are not matters to be left to land policy.

In Iraq the problems relating to land are vast. Few of them are related to shortcomings in the legislative regime. On the contrary, many of the problems exist despite sound legislation. When laws are ignored or improperly administered, changing them will not in itself bring improvement. The rule of law must operate for law reform to be effective.

Successfully adopting and implementing new legislation, particularly in the field of land administration, is notoriously difficult. There must be political commitment to the reform, with decision-makers well informed of the need and the means for addressing it. They must know the consequences of implementation – who are the winners and losers. The affected institutions must be committed as well, not only at senior but at operational levels. This means that the transition must be carefully mapped, with an analysis of activities at the operational level informing the structure of the reforms. Sometimes overlooked is the required financial commitment. There will be transitional costs, including institutional development and training, new forms and software, and depending on the nature of the changes more staff, offices and equipment. Administration of the new legislation may increase operating costs for the system. Public and professional education may be called for. All of these factors should be considered in a feasibility study of legislation that proposes to make significant changes in the land regime.

Feasibility is enhanced by taking a minimalist approach to legislative reform. That is, rather than wholesale adaptation of a law based on international best practices, first consider whether the reform can be effected by changes to procedures and regulations. Where this is not possible, identify the minimum number of amendments to existing law required.

Legislative Drafting

Translating draft laws from English into Arabic is a daunting and time-consuming task. Some technical English legal terms do not have exact Arabic equivalents. The required expertise is not easily available.

It may be more effective for legislation to be drafted in Arabic by Iraqi lawyers, on the basis of instructions prepared in collaboration with international legal specialists.

The Role of Policy

As noted above, the Working Group on Land Tenure and Utilisation recognizes the central importance of underlying land management policies, and over the coming year such policies will be discussed, studied and formulated, finally to be submitted to the government for approval. The fundamental purpose of legislation is to implement policies. Therefore, the extent of the required legislative changes depends on policy choices that have not yet been made.

Having said that, we are in a position to anticipate policies in some matters, and working on legislation can be a useful exercise in identifying policy choices that need to be made.

Factors for the Assessment of Land Legislation

To summarize the above discussion, the following are the factors that should be brought to bear in the assessment of the legislative regime for land, and to the resulting recommendations:

- Needs of the private sector and economic development:
 - Clear, secure land tenure;
 - Protection from arbitrary state intervention;
 - Sound land administration system;
 - Access and equal opportunity.
- The extent to which constraints exist in the legislation.
- The extent to which problems on the ground can be addressed by legislative reform.
- Culture, religion, history.
- The link to other aspects of public policy and administration.
- The feasibility of legislative reform.
- The need for a policy basis.

A LEGISLATIVE ASSESSMENT

A.1 LIST OF LAWS AND REGULATIONS ASSESSED

Constitution 2005
Civil Code 40/1951
CRRPD Law 2/2006
 Council of Ministers Order 262/2008
 Prime Minister's Order 101/2008
Execution of Judgments Law 45/1980
Free Zone Law 3/1998
Law on Governorates Not Incorporated into a Region 21/2008
Law on Granting Ownership of Government Land and Buildings 3/1960
Investment Law 13/2006
 Amendment 2009
 Council of Ministers Order 7/2010
Municipalities Law 165/1964
Organization of Industrial Services Law 30/2000
Law on Ownership of Apartments and Floors in Buildings 61/2003
Physical Planning Law 25/1995
Real Estate Registration Law 43/1971
 Amendment 114/1981
Real Estate Rental Law 87/1979
 Amendment 56/2000
 CPA Order 29/2003
Real Estate Rental Tax Law 162/1959
 CPA Order 49/2004
Real Estate Transfer Tax Order 120/2002
Real Estate Value Assessment Law 85/1978
Selling and Leasing State Property Law 32/1986
Vacant Land Tax Law 26/1962
 Amendment 18/1994

A.2 SUMMARY OF RECOMMENDATIONS FOR LEGISLATIVE CHANGES

- The *Civil Code* (those parts dealing with real estate) and the *Real Estate Registration Law*, and other laws that affect them, should be amended to harmonize and to ensure that the protections of the *Civil Code* are not lost. Conflicting RCC resolutions should be repealed.
- Amend the *Civil Code* as needed to reflect the current state of affairs in Iraq. This calls for extension of time limitations for claims and widening the grounds for invalidation of contracts. These amendments can be considered as part of the process of review of the *Civil Code* recommended above with respect to land tenure.
- The *Real Estate Registration Law* should be amended to provide for a simplified procedure designed to deal with the issue of multiple ownership by heirs, where the current occupants apply for renewed registration in their names. Notice requirements should be modernised and enhanced, not only for this procedure but for all those under which new or renewed titles are issued.
- Statutory provisions preventing mortgage enforcement on residential properties should be repealed.

- The *Law on Real Estate Rental* should be amended to (1) remove the provision under which defaulting mortgagors become tenants and (2) add an exception to the 45-day vacancy termination rule for displaced persons.
- Preparation of a draft regulation that would establish comprehensive regime for state land administration based on best practices, headed by an interministerial body. (Further analysis may determine that legislation is needed in order to establish the system, or that amendments are needed to existing laws. If so, draft legislation will be prepared.)

A.3 ANALYSIS AND ASSESSMENT

A.3.1 PROPERTY RIGHTS AND LAND TENURE

Historical Background

The Iraqi legal system has been influenced by Islamic, Ottoman, French and Egyptian legal systems. The customary tenure systems in tribal areas of Iraq have also had some influence on real estate law. It is necessary to have an understanding of the history of land policy and land law as it impacts on land law reforms that are a necessary precursor to private sector development and the economic growth of the country.

The Ottoman occupation (which began in 1534) introduced a different classification and concept of land ownership. There were four main classifications:

- *Mulk* – privately owned land governed by Shari’ah law
- *Ameriya* or *miri* – State owned land. The *raqaba* (underlying title) is held by the state, while the *tasarruf* (“right of disposal”) was given to individuals and could be inherited or alienated. *Tasarruf* was a common form of tenure, and continued in independent Iraq. It is treated very similar to absolute ownership.
- *Waqf* – endowed land
- *Metruke* – common land, and
- *Mewat* – waste land

In 1858 the Ottoman Empire introduced a new Land Code with a view to increasing individual ownership of agricultural land. This was to be achieved through the registration of ownership and the issuance of the *TAPU* (Title Deed). The *TAPU* recognized a *tasarruf* right, maintaining the state’s *raqaba* (ownership) interest. Up until the implementation of registration which began in Iraq in 1869 tribal customary tenure was strong but as registration proceeded the status of the tribal farmer began to decline.

Nevertheless most land was occupied and farmed by community members, and considered community property owned by tribal and social groups. Nearing the end of the Ottoman era, with governmental authority weakened, influential families seized huge areas of land that was held by tribal groups in adverse possession. The families were able to register themselves as full owners. As well, supporters of the regime, including senior officials, tribal leaders and village headmen, were rewarded with title to large tracts of land. The result was similar to the feudal system, with powerful families owning the land and peasant farmers occupying and working it as tenants or sharecroppers. During the Mandate, the British authorities continued the practice of granting land to influential people.

Land continued to be an issue during the British Mandate. *Declaration 15/1918* stated that those in possession of *ameriya* lands were considered to be tenants. The British realized the importance of clear

real estate registration and issued *Declaration 24/1920* under which two directorates for real estate registration were established in Diyala and Babil. The TAPU department attempted to apply the Ottoman land law. The Government soon after, however, decided to examine the whole area of land policy and based on a report by Dawson (a British advisor on land) the Government issued the *Land Rights Reconciliation Law (50/1932)* (replaced by 29/1938) and *Alezma Law (51/1932)* (amended by 153/1959). The right of *alezma*, or adverse possession, in *ameriya* lands was recognized. *Alezma* title was identical to *tapu* title, except that it could not be conveyed without the approval of the registry office. This was to ensure *alezma* properties were not alienated out of the tribe. This meant that there were now three types of rights to *ameriya* lands: *TAPU*, *alezma* and pure state land.

In 1951 the Iraqi *Civil Code* was adopted. It incorporated French Civil Code principles on land rights, adapted to certain features of Ottoman and Islamic land law. The *TAPU* system was replaced in 1971 by the *Real Estate Registration Law No. 43*. The new law did not affect land tenure rights per se.

At the beginning of the Ba'ath period, the concentration of ownership was extreme: some 66% of agricultural land was in the hands of 2% of the population. The new regime passed a land reform law in 1958 that limited the size of holdings, expropriating the remaining land. The expropriated land was to be distributed to individuals, who were to repay the government over twenty years and join a cooperative. About 70% of the private land was expropriated. By 1970 some 10 million dunams of land had been taken of which some 8 million dunams were distributed to more than 400,000 families. They were given *tassaruf* rights. Pending distribution landlords were required to continue management of the land and supply inputs, with their share of the crop reduced. In 1970 the maximum size of landholdings was reduced, and communal farms were established. In 1975 another law broke up the estates of Kurdish tribal landowners.

In the late Ba'ath era, the government carried out forced displacement and confiscation of property, and granted titles to the beneficiaries. This included Arabisation in the north, the Anfal action against the Kurds, and the expulsion of Shiites to Iran. As well, regime strongmen would simply seize valuable land and businesses. The figures for displacement and confiscation are disputed but are known to be in the hundreds of thousands.

After the fall of Saddam Hussein in 2003, the resulting total breakdown in security produced massive forced migration, internal and external, affecting millions. Abandoned houses were occupied by those who left their own homes, or by opportunists. State land was occupied, with large informal settlements thus established. Illegality and corruption have led to forgery of title documents, so that there may be competing title deeds for a property.

A significant effort has been made to deal with property claims originating in the Ba'ath era, with the establishment of the CRRPD to decide claims. The effort has been less than successful due to the inability of the authorities to enforce eviction notices and reluctance of the state to pay financial compensation. Claims arising before or after the Ba'ath period are made in the civil courts.

Legislative Regime

Constitutional Protection

Constitutional protection for private property is a cornerstone of private sector development. Article 23 of the *Constitution of Iraq (2005)* provides for the protection of private property and states that the owner shall have the right to benefit, exploit and dispose of his property within the limitations of the law. This article also states that expropriation is only permissible for the purposes of public benefit in return for just compensation.

Lesser rights in land, such as usufruct rights, are private property for the purposes of constitutional protection. Under the *Civil Code*, every right having a material value is considered property (art. 65). Therefore it must be acquired for public benefit, and compensation must be just and fair.

The *public benefit* test for expropriation is open to interpretation. In the case of roads and other public works, the test is easily met. However, the answer is not obvious in the case of expropriation in support of purely private sector development, such as a shopping centre or luxury housing. The US Supreme Court in a recent case (*Kelo v. City of New London*, 545 U.S. 469 (2005)) found the public benefit simply in increased local taxes. The decision was a split one and highly controversial.

Land Tenure Laws

(See Appendix A for further analysis.)

The three broad types of land tenure recognized in Islamic theory continue to underlie Iraqi land law, as they do in most Islamic countries. They are *mulk* or land in full private ownership, *miri (amiriya)* or state-owned land, and *waqf* or endowment land. *Mulk* is close to the Western concept of freehold. It originally carried a religious tithing obligation. *Miri* covers a range of different kinds of estates in land, including state land leased to users, who were required to pay tax, as well as *tassaruf* (described above). *Waqf* is land endowed for religious or philanthropic purposes.

The *Civil Code 40/1951* is the most important single source of the codified law affecting land tenure, although some of its provisions have been superseded by other legislation or are not followed in practice. The *Civil Code* is drawn from (1) Egyptian law of the period, which itself followed the French Civil Code, (2) Ottoman laws including the *Mejelle* (governing civil contracts), and (3) Islamic law. The *Civil Code* is not the last word on land tenure, however. Besides subsequent laws that affect the *Civil Code*, Islamic law still exists as a subsidiary source of law.

The *Civil Code* defines property as every right having a material value. Movable and immovable property are distinguished. The right to complete private ownership of property is recognized.

The right of possession is recognized. This right is separate from ownership, and is distinct from the right of use, which is granted by an owner to another person. A person in possession is presumed the owner unless the contrary is established. If ownership is not registered in the Land Registration Department, a person who continually possesses it for five years cannot be usurped, if possession is based on title or valid grounds such as inheritance or purchase. Continual possession of unregistered land for fifteen years on the assumption it is one's own property prevents a court action against the possessor. This right to acquire land by prescription recognizes the concept of *alezma*. It is to be noted that, according to the *Civil Code*, this right does not give rise to title, but only immunity from actions to recover the land.

Owners may also transfer parts of their rights to others, including servitudes and usufruct, while retaining the other aspects of ownership. Land may be mortgaged in accordance with usual civil law principles. The *Civil Code* provisions for leases have been affected by a 1979 law, discussed below.

In addition to these familiar aspects of land tenure in the Western civil law tradition, the *Civil Code* recognizes property rights from Iraqi history and Islamic law:

Tassaruf. As discussed above, in the Ottoman system all arable land was considered to be owned by the state. A person farming the land was given a right called *tassaruf*. Under the *Civil Code* this right is

recognized. The holder may cultivate it, plant orchards and vineyards, and build houses, shops and factories for agricultural purposes. The holder has exclusive possession of the land. The *tassaruf* may be sold, leased or mortgaged. A person may acquire a *tassaruf* by cultivating *miri* land for ten years without being challenged.

Shuf'a. This is a right of pre-emption enjoyed by co-owners or, where there are contiguous housing plots, by a neighbour. Upon a sale, the person with the right of pre-emption must be given the opportunity to purchase it on the same terms. The *Civil Code* preserves this right, although the name *shuf'a* is not used. The seller must notify the right-holder of the impending sale, upon which the right-holder has fifteen days to declare the intention to exercise the right, and then thirty days to bring an action in court.

Waqf or Endowment Land

Waqf is property that has been given by the owner for religious, philanthropic or family purposes. The endowment is perpetual. The stipulations of the donor must be fulfilled to the letter, as long as they are feasible and compatible with *Shari'a*. The donor determines how the *waqf* will be managed. The manager (*mutawali*) must administer the property in the best interests of the beneficiaries. Elimination of a property's *waqf* character is a difficult process and only possible if other property is substituted.

Endowment land is not governed by civil law. Unlike in many other Islamic states, in Iraq there is no ministry for *awqaf* affairs. Under the Coalition Provisional Authority the Ministry of Awqaf Affairs was replaced by three independent supervisory departments, one for each of the major religious communities (Shia, Sunni and Christian). These departments operate independently of state administration.

Most *waqf* property is dedicated for religious purposes, supporting mosques' maintenance and operating expenses. The department mentioned above may audit the management and take over if the manager is not doing a proper job.

We have been unable to obtain information on the extent or character of *waqf* land.

Foreign ownership

Foreign ownership of land was prohibited by *Revolutionary Command Council Order 23/1994*. A recent exception to this prohibition was introduced by an amendment in 2009 to the *Investment Law*, which gives foreign investors the opportunity to own housing projects that will be sold to Iraqis.

Inheritance Law

The *Civil Code* leaves matters concerning inheritance rights to religious law. Under Islamic law, owners do not have full testamentary freedom, but must leave at least one-third of their land to their heirs. This results in multiple ownership of real property, which may become increasingly complex in succeeding generations.

Land Registration Law

Registration of title is governed by the *Real Estate Registration Law 43/1971* (amended by *114/1981*). This law provides a comprehensive framework for the process of real estate registration. The responsible authority is the Real Estate Registration Directorate (RERD) within the Ministry of Justice. Land transactions must be registered to be effective under this law to be effective.

The registration law recognizes these categories of land:

- Private real estate: owned fully by the person named in the Title Deed.
- Public real estate:
 - Properties under *tassaruf*, the previous *TAPU* titled land.
 - Properties under *alezma*.
 - Government property.
- Endowment land.

Title deeds issued under this law replace those issued under the previous system. There is no change to tenure rights as governed by the *Civil Code*. On *miri* land, *tassaruf* and *alezma* rights are identical.

Assessment / Issues

The Constitution

The *Constitution* recognizes private property and protects it from arbitrary state intervention. There is a question for Iraqi legal scholarship as to whether the Constitution allows the state to expropriate land for the purpose of purely private development. The issue is not only a constitutional one, however. It is a matter for land policy.

The Civil Code

The *Civil Code* is a masterful work of legal scholarship. It is the fundamental law on civil rights and obligations. With respect to land matters, it integrates European civil law with Ottoman and Islamic law. It is revered by Iraqi lawyers, although unfortunately its status has been diminished during and after the Ba'ath period. Many of its provisions have been ignored or avoided in practice, sometimes out of ignorance, but often from coercion or corruption. Among citizens and even those working in land administration there is confusion and ignorance about land rights. There is a deep desire on the part of Iraqi lawyers that the *Civil Code* be restored to its place of prominence.

Professor Haider Ala Hamoudi, a notable scholar of Islamic and Iraqi law, has stated:

I suppose if I had to analogize, within Iraq, reverence to the Civil Code is more or less like American reverence to the Constitution. In Iraq, constitutions come and go, they are politically motivated, they are hard to take as seriously, but the Civil Code is central to the legal theology. Sure a clause here or there might be amended, but as a general matter it has proved remarkably durable. Get lawyers in Iraq, from any place, including the Kurdish self rule areas that have not been under Arab control for nearly two decades, including the most religious and the most secular, the most Kurdish and the most Arab, the most Sunni and the most Shi'i and they all know the Civil Code and can quote its provisions, and the commentaries, thereto, very liberally¹

The *Civil Code* contains fundamental protections against coercion, fraud and deceit. Transfers of property made under such conditions are invalid. Possession gained through force or deception cannot result in any right for the possessor. Those who are dispossessed may take their claims to the civil courts of justice, who can order restitution of the property and compensation. These provisions of the *Civil Code* are highly relevant to the displacements that took place since 2003.

¹ Quoted in Dan E. Stigall, *Refugees and Legal Reform in Iraq: The Iraqi Civil Code, International Standards for the Treatment of Displaced Persons, and the Art of Attainable Solutions*.

According to some commentators, these protections have been effectively removed by the *Real Estate Registration Law* and certain resolutions of RCC. Not all experts agree on this point. Nevertheless the issue needs to be clarified, and this can be accomplished by legislative amendments that repeal subsequent inconsistent laws and resolutions and where appropriate harmonize useful ones with the *Civil Code*. The *Civil Code* should be the primary source of land tenure rights and obligations, supplemented by a *Real Estate Registration Law* that is fully consistent with it.

Tenure and Registration

All of the rights and obligations of landowners are clearly provided for in the *Civil Code*. This includes the rights of holders of *tassaruf*, who are free to sell and to mortgage their interest, despite the state's holding of the underlying "ownership". (In fact, *tassaruf* means right of disposal.)

The restriction on foreign ownership of land is not in itself a consideration for foreign investment, at least the kind of foreign investment that will contribute to the economy. As long as there are clear and enforceable rights under leases, foreign investors will not be deterred, and in fact may prefer not to assume the burden of land ownership. International experience is decisive in this respect, in that countries like China and Vietnam have attracted a great deal of foreign investment without granting land ownership to investors.

On the face of it, the right of pre-emption may be seen as a constraint on the market. This is reported not to be the case in practice. Real estate transactions accommodate the right without difficulty.

With respect to registration of transactions, there is evidence of a growing incidence of sales taking place outside the registry system. In these cases, the benefits of registration are outweighed by the costs, from the point of view of the buyers and sellers. The issue is worthy of further study, with a view to making it easier to access the registration system.

Inheritance law requires owners of land, including *tassaruf*, to leave at least one-third of their land to their heirs. This produces multiple ownership that makes it difficult to deal with inherited property, particularly where registration has not been updated over more than one generation. Some land may be "frozen" due to multiple ownership. Much *tassaruf* land is in the name of an ancestor. (Surveys asking owners whether they have a registered title may mask this problem.) The complications for descendants in dealing with multiple ownership are a disincentive to use the registry system and encourage undocumented transactions, with the registry records falling out of date.

The *Real Estate Registration Law* is not well equipped to address this problem. It would be useful to have a simplified procedure designed to deal with it directly, where the current occupants who are heirs may apply for renewed registration in their names. Some safeguards are called for. The notice requirements should be enhanced in order for notice to reach absentees, and the successful applicant should remain liable to family members who may be dispossessed.

In fact, the notice provisions for applications for title deeds (newspaper publications and posting on the property: Art 45) are in general quite weak considering the number of displaced persons and émigrés, and may be a means by which corrupt practices can be perpetrated.

There is no right of public access to records in the real estate registry. Public access to ownership and transaction records is a significant support to the operation of efficient land markets, and this has been advocated for reform of the *Real Estate Registration Law*. The issue must be left for the policy-makers, as the culture in the region, reflected in the laws governing land registries, is that land ownership is a private matter.

Studies indicate that the land registration system works reasonably well for its users. There is one procedural aspect that is problematic. The registry acts as a tax collector for Ministry of Finance and building inspector for municipalities. Transactions may not complete registration without certificates from these bodies indicating compliance. It appears that MoF carries out no systematic collection of land taxes, which are periodic taxes meant to be collected regularly. Municipalities are weak enforcers of their planning and building regulations, and supposedly use registration of transactions as a pressure point. We do not have any information as to whether these measures are effective in tax collection and building compliance. They are certainly a constraint on market transactions. If effective, then they are an incentive for avoiding the registry. It appears there is no need for amendment to legislation in order to abolish this procedure.

Direct transaction costs are very high by international standards, and this represents a large incentive for avoidance. The fee for registration of transfers is 3% of value. Because the fee is unrelated to administrative costs and does not fund a government guarantee of title, it is in effect a tax. It is not known how effective the registration fee is. How much revenue does it raise in relation to the cost of administering it? A flat fee may be preferable, and less of an incentive for undocumented transactions.

All records in the registry are in paper form and there are no aggregate data. Proposals have been made for digitization of records, electronic recording of transactions, and certain organizational changes. A Turkish project for Ministry of Justice is currently studying these matters. Implementing such modernization will necessitate changes to the *Real Estate Registration Law*, which we will not anticipate.

Access to Tenure

Private tenure under the *Civil Code* and *Real Estate Registration Law* consists of freehold, *tassaruf* or leasehold. It is not readily adaptable to group or cooperative rights, which may in some circumstances be an appropriate means of addressing informal settlements. Iraq's experience in dealing with *waqf* land may be useful in this regard.

Mortgage Enforcement

The *Civil Code* has a modern regime for enforcement with appropriate safeguards, under which the creditor bank takes court action. There are no apparent constraints. It is reported that mortgage enforcement is inefficient in Iraq. (See *National Housing Policy*, Section 2.3.) This inefficiency is attributed to the need for court action to achieve foreclosure.

A non-judicial means of mortgage enforcement has been advocated. Such a system can be administered through the real estate registry, and can be efficient and fair in the right circumstances. But this can only be recommended where there is minimal corruption and strong rule of law, which are clearly not the case in Iraq. The resources that would have to be brought to bear in implementing another mortgage enforcement system would be put to better use in supporting the civil courts' administration of foreclosure actions.

There are key provisions in the law that deter banks from making mortgage loans for owner-occupied housing. The *Law on Execution of Judgments No. 45 of 1980* prevents enforcement (Art. 62). The *Law of Real Estate Rental*, discussed below, allows defaulting resident owners to remain in their houses as tenants. These are clear constraints on housing finance.

Recommendations Concerning Property Rights and Land Tenure

For Policy Consideration

- Address disincentives to registration of transactions.
 - Detach from tax collection and building enforcement.
 - Flat registration fees.
 - Consider simplified procedures for low-value properties.
- Alternative approaches to tenure to address informal settlements.
- Public access to records in the land registry.
- Digitization of the registry and organizational development of RERD.
- Institutional development for the civil courts in the administration of mortgage foreclosure actions.

Legislative Action

- The *Civil Code* (those parts dealing with real estate) and the *Real Estate Registration Law*, and other laws that affect them, should be amended to harmonize and to ensure that the protections of the *Civil Code* are not lost. Conflicting RCC resolutions should be repealed.
- The *Real Estate Registration Law* should be amended to provide for a simplified procedure designed to deal with the issue of multiple ownership by heirs, where the current occupants apply for renewed registration in their names. Notice requirements should be modernised and enhanced, not only for this procedure but for all those under which new or renewed titles are issued.
- In conjunction with the legislative changes, there should be a program of publicity and education to better acquaint citizens, lawyers and officials with the *Civil Code* and supporting legislation.
- Statutory provisions preventing mortgage enforcement on residential properties should be repealed.

A.3.2 LAND DISPUTES

Legislative Framework

The *Civil Code* contains protections against coercion, fraud and deceit. Transfers of property made under such conditions are invalid. Possession gained through force or deception cannot result in any right for the possessor. Those who are dispossessed may take their claims to the civil courts of justice, who can order restitution of the property and compensation.

The *Constitution* provided for the Iraqi Property Claims Commission (IPCC), a special tribunal to address property claims arising out of the Ba'ath period, from 17 July 1968 to 9 April 2003. The commission is now known as the Commission for the Resolution of Real Property Disputes (CRRPD), under *Law 2/2006*. After adjudication the CRRPD can order restitution of the property to the rightful owner. If that is not possible because the property was sold after its confiscation or seizure, then the CRRPD can order the first seller to pay compensation. This is usually the state.

See Appendix C for detailed analysis of the CRRPD Law.

Property claims arising out of the displacement of population after April 2003 must be resolved in the civil courts.

With respect to post-2003 displacement, Council of Ministers *Decree 262/2008* provides a grant of one million Iraqi dinars for returnees provided that their displacement record is “written off”. The decree further allows a grant of rental assistance at three hundred thousand Iraqi dinars per month for six months for displaced families that have been occupying the homes of the returnees, provided that they vacate the home. There are time restrictions and the relief is only available to a subset of refugees. Prime Minister’s *Order 101/2008* provides that anyone who occupies the home of a displaced person will be considered a participant in that person’s forcible displacement under the Ant-Terrorism Law.

Assessment / Issues

CRRPD Claims²

- There is a large backlog in claims before the CRRPD.
- Where restitution of property is ordered, in a large proportion of cases enforcement is not carried out on the ground, with police unable or unwilling to confront occupiers.
- Where compensation is ordered in lieu of restitution, it is the first seller who is liable, which in most cases is the state. The state’s over-riding objective is to protect public finances, and for this reason MoF appeals all such orders, as well as orders for the restitution of property still in state possession. In any case, the state has stopped making payments of compensation ordered by CRRPD.
- CRRPD claims covers only loss of real estate by an owner. There is no remedy for destruction of property. Renters have no redress.
- Those who benefitted from the confiscation of property do not have to pay compensation. The state assumes the burden.

Claims under the *Civil Code*³

As noted above, the CRRPD process does not apply to claims arising outside the Ba’ath era. This is not in itself problematic. The soundness of the *Civil Code* was commented on above. It protects against loss of property through fraud, coercion or deceit, and provides for actions to oust usurpers and adverse possessors, and thus provides a full remedy for those displaced in the circumstances after 2003. Actions are brought in the civil courts, which apply well-understood and time-tested legal principles. In fact, several of the shortcomings of CRRPD claims do not exist under the *Civil Code*. Those who benefitted may be liable to pay compensation. All forms of loss are covered, including destruction of property and loss of movable assets. Those who were responsible for the loss or benefitted from it are liable for damages. Renters may obtain redress.

The issue of failure to enforce eviction orders is common to both CRRPD and *Civil Code* claims, but in the courts the successful claimant will have the alternative remedy of compensation. There is of course a backlog of land dispute cases in the court system as well as in CRRPD. A backlog in the courts is not sufficient justification for setting up an alternative tribunal such as CRRPD, or a purely administrative system, to process the claims. The judicial system needs to be supported and enhanced, rather than replaced by a parallel claims dispute system that lacks the integrity and moral authority of the civil law. In any case, alternative systems would require a huge dedication of resources in order to set up and operate. If such resources are available, then they would be more usefully applied to the civil court system.

² See Peter Van der Auweraert, *Property Restitution in Iraq*, (2007).

³ This section relies on Dan E. Stigall, *Refugees and Legal Reform in Iraq: The Iraqi Civil Code, International Standards for the Treatment of Displaced Persons, and the Art of Attainable Solutions*.

We have discussed above the matter of the loss of *Civil Code* protections through the operation of the *Real Estate Registration Law* and the *Law on Real Estate Rental*, and recommended legislative amendment to restore the protections. Not only is this important, but the continuing insecurity requires reinforcement of the *Civil Code* protections. Firstly, there should be no loss of the right to bring a claim through time limitations while the perilous security situation persists. Secondly, the scope of actionable duress needs to be widened so that intimidation directed against a wider range of third parties should be recognized as grounds for invalidating transactions. Thirdly, the concept of invalidation of a contract due to its disproportionate nature should be considered.

Post-2003 Displacement Measures⁴

Certain kinds of violations after 2003 are not addressed by the existing measures:

- Families who were forced out of their homes by those who had been displaced by the former regime and returned to their areas of origin immediately after 2003.
- Families who were forcibly displaced after 2003 but were not property owners at the time.
- People who were forcibly displaced inside Iraq after 2003 and who do not want to return but, instead, prefer reintegration in their areas of displacement or elsewhere in Iraq.
- People whose properties were destroyed after 2003 as part of the sectarian violence or in the course of military operations.
- Families who were forcibly displaced after 2003 and who belong to Iraq's small minorities including Christians, Yazidis and Shabaks.

All of these violations may be the subject of claims in the civil courts, subject to some restrictions that should be removed. As an alternative to specific programs to address these issues, or as a supplement to them, resources could be made available to support court resolution.

Recommendations Concerning Land Disputes

For Policy Consideration

- Apply significant state and donor resources to the civil courts and CRRPD for the purpose of dealing with the backlog of land dispute cases and facilitating access to the courts.
- Reconcile the goal of protection of state revenues and assets with the rights of successful claimants under CRRPD decisions. This is matter that goes beyond land policy, and requires input from public finance policy advisors.
- Direct restitution of disputed state land and property by relevant ministries and state authorities⁵.
- Cease the policy of automatic MoF appeals against CRPPD decisions.
- Systematically monitor enforcement of CRRPD decisions and take action where needed.
- Reform the CRRPD Cassation Commission to increase its capacity.
- Review and expand current measures to address post-2003 displacement.

⁴ From Peter Van der Auweraert, *Land and Property Issues in Iraq: Present Challenges and Future Solutions*, in *Resolving Iraqi Displacement: Humanitarian and Development Perspectives*, Brookings and Universitat Bern, Doha Conference 18-19 November 2009.

⁵ This and the remaining recommendations for policy consideration are from Peter Van der Auweraert, *op. cit.*

Legislative Action

- Amend the *Civil Code* as needed to reflect the current state of affairs in Iraq. This calls for extension of time limitations for claims and widening the grounds for invalidation of contracts. These amendments can be considered as part of the process of review of the *Civil Code* recommended above with respect to land tenure.

A.3.3 REAL ESTATE RENTING

(See Appendix C for further analysis.)

Law of Real Estate Renting

The *Law of Real Estate Renting (87/1979)* by its terms seeks to prevent the operation of a free market in rental of residential real estate. The rent is to be a percentage of the value of the property as set by the Real Estate Rental Tax Directorate. For new rentals, the law is routinely ignored in practice. For existing tenancies, the issue is a real one. A recent attempt to repeal the law was controversial and subsequently withdrawn.

The amendment by *Law 56/2000* gave greater rights to residential landlords to terminate leases as from October 2003. *Law 56/2000* was itself amended by *CPA Order 29/2003* to provide for better protection for tenants.

The Law interferes with mortgage enforcement in the case of residential tenancies. It establishes a leasehold interest for the defaulting mortgagor upon foreclosure, for up to five years at a legally prescribed rent of five percent of the value of the property per year. Without the ability to exercise ownership rights, mortgage foreclosure sales do not attract buyers and the banks are forced to become property managers. In these circumstances, banks will not finance owner-occupied houses.

Assessment / Issues

This law supersedes the provisions of the *Civil Code* on tenancies and thus prevents citizens from availing themselves of its protections. A tenant may be evicted for non-payment of rent after only 15 days. If the leased estate remains uninhabited for more than 45 days without excuse the lessor may institute eviction proceedings. Such a legal scheme creates numerous problems for displaced persons.

The issues of (1) rent control for residential tenancies and (2) the balancing of landlord and tenant rights require further study and consideration by policymakers. They are matters of social policy, particularly as it affects the poor. Many advanced developed countries have residential rent control and special protections for tenants, which are undoubtedly restrictions on the operation of market relations in land. For Iraq, an issue for study is whether the current restrictions are appropriately targeted.

Rehabilitating the housing finance system is an important challenge for Iraq. (It is discussed further below.) The inability of banks to effectively enforce mortgages on residential properties is a serious obstacle.

Recommendations Concerning Real Estate Rental

For Policy Consideration

- The issues of rent control and the balancing of landlord-tenant relations.

Legislative Action

- The *Law on Real Estate Rental* should be amended to (1) remove the provision under which defaulting mortgagors become tenants and (2) add an exception to the 45-day vacancy termination rule for displaced persons.

A.3.4 REAL ESTATE TAXES AND VALUATION

(See Appendix D for further analysis.)

Property Tax

Iraq does not have a property tax as generally understood; that is, a periodic tax on land and buildings, based on their value, usually used directly in support of local services.

On vacant land only, there is an annual tax on market value under the *Law on Vacant Land Tax 26/1962*, amended by *Law 18/1994*. This tax is not a local government tax, but is administered at the national level by MoF. Although the tax is supposed to be paid annually, in practice there is no system of collection except that arrears must be paid upon registration of transactions in the property registry.

Real Estate Rental Tax

A tax of ten percent is imposed on rental revenue from residential, commercial and industrial properties, under the *Law of Real Estate Rental Tax 162/1959*, as amended by *CPA Order 49/2004*. It is to be paid semi-annually.

In practice, owners do not pay this tax and MoF does not enforce payment, except for the collection of arrears in the process of registration of transfers.

Real Estate Transfer Tax

A tax is imposed at progressive rates on the value of real estate above ID20 million when it is transferred. The rate is three percent on value up to ID30 million, rising gradually to 6% of value over ID90 million. The value on which the tax is levied is the transfer price or the value estimated under the *Real Estate Value Assessment Law*, whichever is higher.

Valuation

Valuation of real estate for the purposes of taxation is governed by the *Real Estate Value Assessment Law 85/1978*. The law provides for committees of officials that decide values. The process is said not to produce fair and consistent market valuations.

Assessment / Issues

Iraq's lack of a property tax to support local government or administration has been noted. Its need for a property tax is therefore predicated on a policy of a particular kind of decentralisation, which results in self-governing cities and towns with independent revenue-raising mechanisms. There is nothing to indicate that Iraq is moving in this direction. The opposite trend is seen in the recent *Law on Governorates Not Incorporated into a Region 21/2008*, which gives limited powers to local councils and

no revenue sources. It abrogates the more extensive powers given to municipal councils under the 1964 *Law on Municipalities*.

In any case, there is little evidence in international development practice that decentralisation in itself has achieved better land administration, more accountable government, less corruption, or enhanced revenue raising. With respect to property tax in general, the experience in other countries attempting to implement a new one has proven very difficult politically. Also, the technical and administrative challenges that Iraq would face in establishing a property tax are formidable.

The two large issues of taxation and decentralisation have not yet been resolved in Iraq. Experience does not favour taxation, in part because there is no clear connection between taxes and services received from government. Decentralisation is fundamentally a political process, rather than simply a means for better service delivery. Both taxation and decentralisation involve matters beyond the scope of land policy. Therefore we are not in a position to recommend that Iraq implement in the near or medium term a property tax to support local government as part of the land administration system.

We do not have information as to the effectiveness of vacant land, real estate rental and transfer taxes. Are they important sources of government revenue? To what extent are they avoided? The following issues are apparent:

- Vacant land tax exists to discourage undeveloped building plots. Such taxes have proven to be ineffective for this purpose.
- Taxing only rental properties is inequitable and distorts land markets. It encourages undocumented rental transactions.
- Rental tax applies to gross revenue, without regard to the lessor's costs. This is unfair, and exacerbated by rent control.
- Failing to collect periodic taxes as they become due is poor administration, and indicates that government policy on tax collection is weak.
- Collecting tax arrears at the point of registration of transfers is an incentive for undocumented transactions, as well as adding unnecessary bureaucratic steps to the process.

Determining the market value of real estate is a well-established discipline where market relations in land thrive. Actors in the system, both on the state and private side, understand and accept the approaches to valuation and the kind of data that are required in order to produce accurate values. Valuation is not an administrative task based on regulatory norms, but an opinion as to what a property would sell for in the open market. The purpose of legislation on valuation is to set out the governance of the valuation process, with an accessible means of appeal to administrative bodies for those affected by official valuation decisions. It is not apparent whether the present *Law on Real Estate Valuation* is flawed in this respect, or whether it is the administration of the law that is problematic.

The technical and administrative burden of property valuation for tax purposes is great. The initial mass valuation of all property would be a formidable task, as would its periodic updating. In Iraq the difficulty is exacerbated by the lack of readily available market information on which to base estimates of value. In such an atmosphere, valuations usually become prescriptive; that is, they lose their connection to real market values on the ground. When this happens, the system loses its integrity, as the principle of an *ad valorem* tax is lost, despite having to maintain an institutional regime to support it. These matters should be considered in the policy discussion concerning the tax regime as a whole.

Recommendations Concerning Real Estate Taxes and Valuation

For Policy Consideration

- The various taxes affecting land need to be analysed in terms of their effectiveness, the importance of their contribution to government revenues, affect on land markets, their fairness and administration. This study must be a joint exercise involving officials from land administration and taxation (MoF).

A.3.5 URBAN PLANNING AND CONSTRUCTION APPROVAL

Legislative Scheme

Physical Plans are regulated by *Law 25/1995*. Urban planning is the responsibility of the General Directorate for Physical Planning (GDPP), a unit of the Ministry for Municipalities and Public Works (MMPW). GDPP prepares structure plans for governorates and master plans and detailed plans for cities and villages. MMPW has approval authority for such plans. Reclassification of land use is governed by regulations issued by MMPW and the local Municipality Directorate. Baghdad is a special case: the Baghdad Governorate decides land use within its boundaries.

Under the *Law on Municipalities 165/1964*, implementation of urban plans was the responsibility of municipalities. The superseding *Law on Governorates Not Incorporated into a Region 21/2008* appears to maintain this responsibility. However, institutional capacity is limited and municipalities have no access to revenue sources that could fund infrastructure, making it difficult to implement the plans.

It is of note that the local elected councils do not have regulatory or approval powers with respect to plans or construction approval. The *Law on Governorates Not Incorporated into a Region* gives them no authority in this regard.

Assessment / Issues

Master plans exist for all main cities and towns, but they are outdated, many having been prepared in the 1970s. It is reported that their land use designations are often ignored by state land allocation.

There has been a major effort by MMPW to update master plans for all main cities and towns prepared in the 1970s through the appointment of teams of foreign and local consultancy firms. The plan preparation process has, in places, been hampered by security considerations and the absence of robust information on which to make planning projections. How far these plans actively guide development remains an issue and it is reported that their land use designations are often ignored by state land allocation.

The recent *Iraq National Housing Policy* prepared by the Ministry of Construction and Housing (supported by UN-HABITAT) identified these issues relating to urban planning:

- Land use and infrastructure planning is a centralised government function, with no formal role for local governments or citizen input.
- There are no revenue sources for local governments.
- The procedures for converting agricultural land to urban uses are inefficient and lacking in transparency.
- There are no established procedures for improving or developing unplanned settlements.

The *Housing Policy* calls for the devolution of authority to prepare and implement projects and manage land to the appropriate local level. This would require new laws and implementing regulations. Such a proposal goes much further than the *Law on Governorates Not Incorporated into a Region*, which was passed less than three years ago. As discussed above, the issue of decentralisation is not resolved in Iraq, and in the current situation the benefits of devolution are not obvious. Institutional capacity is weak at lower levels. In the circumstances, it may be appropriate to concentrate on certain key aspects of planning that could be reformed without comprehensive devolution. These would include:

- A formal approval function for governorate and local councils, with technical responsibility remaining with MMPW.
- Mechanisms under which local governments raise funds for infrastructure from developers and owners.
- Procedures for consultation with citizens on plans and certain kinds of land use changes.

It is not clear whether the procedures for conversion of land uses are themselves flawed or whether they are simply not being properly followed.

Informal housing includes occupying land without right and constructing buildings without approval. The *Housing Policy* advocates a case-by-case approach to the issue. The options should be (1) to redevelop the land with resettlement of occupiers or (2) to regularise the tenure of occupants and upgrade the area. It calls for legislation that would govern the procedures. These are complex matters, practically and legislatively. Pilot projects should inform the procedures.

Recommendations Concerning Urban Planning and Construction Approval

For Policy Consideration

- An appropriate role for governorate and local councils in the approval of physical plans and changes in land use, provision for citizen consultation, and mechanisms for infrastructure financing.
- More efficient and transparent procedures for conversion of land from agricultural to urban uses.
- How informal settlements should be addressed. Pilot projects are recommended.

A.3.6 ADMINISTRATION OF STATE LAND

Legislative Scheme

By *administration of state land* we mean the systems by which the state acquires, manages and allocates state land. We do not include *tassaruf* land under the term *state land*, because although the state holds the underlying title the *tassaruf* holder has an unfettered right of disposal and the same constitutional and *Civil Code* protections enjoyed by freehold owners.

MoF is responsible for recording and protecting state land and other property, while the Baghdad Mayorality Properties Directorate is the custodian of land and properties within its boundaries. The State Properties Directorate of MoF has the mandate to oversee the sale, lease or other assignment of government properties. MoF distributes state lands by order to ministries and to municipalities (through MMPW). The ministries control and manage the land allocated to them. They have land committees that make decisions on allocation. MoF remains the holder of title to land distributed to ministries.

Allocation of State Land

The *Selling and Leasing State Property Law 32/1986* applies to all land allocations except those in free zones, industrial estates or under the more recent investment laws. Under *Law 32/1986* land may be sold or leased for residential, commercial or agricultural purposes. Public auctions are required to be held under prescribed procedures. Ministries that control land are bound by these procedures. Each has a sale and lease committee that manages the auction process. As part of the process, the land is valued by an assessment committee consisting of three directors or other high-level officials, plus a real estate agent and importantly, a representative from MoF.

Free zones are governed by the *Free Zone Law 3/1998*, administered by the free zone authority under MoF. Land in industrial estates is governed by the *Organisation of Industrial Services Law 30/2000*, administered by Ministry of Industry and Minerals. No public auction is required. It is of note that under the *Organisation of Industrial Services Law* industrial projects must locate in industrial estates.

The most significant exception to the public auction requirement of *Law 32/1986* is under the regime of *Investment Law 13/2006*, amended in 2009. The purpose of the law is to promote investment by the private sector in. It establishes the National Investment Commission (NIC) whose role is to award investment licences for projects worth at least USD250,000. The investment licence carries certain benefits, including tax exemption for ten years. Iraqi nationals can acquire state land and foreigners are entitled to leases of land for up to 50 years. The 2009 amendment allows foreign investors to acquire freehold ownership of land from the state if the project is a housing project for Iraqi nationals. Under the *Law*, land can be part of the incentive for the investor.

(See Appendix E for more details of the *Investment Law*.)

In December 2010 the Council of Ministers issued an order (7/2010) under the *Investment Law* concerning the sale and lease of state property for investment purposes. The main purpose is stated as the promotion of projects, particularly residential projects to address the serious housing shortage. It calls on MoF, MMPW, Baghdad Municipality, other municipalities and other bodies to provide land suitable for projects. It authorizes the NIC to give land to investors for building housing units free of charge if for low-income housing. For other housing projects land may be given in ownership in exchange for the state receiving a certain share of the housing units, from 1% to 12% depending on the status of the city or sub-district. NIC may lease out land for agro-industrial, service, tourist, recreational and other uses at rents that are specified fractions of rent based on estimated value of the property.

Agricultural Leases

The General Commission of Agricultural Land (GCAL), under Ministry of Agriculture (MoA), is responsible for state land that is leased for agricultural use, under *Law 35/1983*.

Land Acquisition

The state may expropriate land for its purposes. The procedures and compensation provisions are covered by the *Law on Expropriation 12/1981*. Expropriation is administered by MoF.

Assessment / Issues

There is confusion and ignorance about the procedures and rules concerning dealings in state land, and not only among the unsophisticated. MoF is the holder of title in state land, and as such its approval should be required for any sale or lease, unless this authority has been specifically delegated or assigned

to another ministry. Whether this is the case for land allocated to other ministries such as MMPW is not clear. In any case, in practice land is often allocated without MoF approval. This state of affairs must be resolved.

It is said that there are overlapping responsibilities, lack of coordination among ministries, confusing procedures, and lack of information about them. Information is unavailable as to the location of state land and which ministry controls it. Land is allocated by state bodies without regard for land use designations under master plans and without provision for necessary service infrastructure. There is no indication that these problems are created by the laws and regulations. They are simply the practice. In order to address this weakness there is a need for an institutional framework that mandates coordination, organizes information and makes it accessible, and standardizes procedures for decision-making.

There is a lack of transparency in the allocation of state land. Land auctions are not conducted in accordance with the rules: announcements do not reach the public. The implementation of the *Investment Law* has been carried out without a clear policy basis other than the encouragement of investment. There are no principles or guidelines governing the incentives available to investors, so that land can be given away or sold at concessionary prices to investors who do not need incentives. When investors fail to live up to agreements, there is an inability or unwillingness to enforce the agreements. The recent order of the Council of Ministers does nothing to address these issues. In fact, its effect is to require state bodies to subsidize investors through land allocation. The prices have no relation to the market.

The availability of state land at less than its market value is an obvious opportunity for unjust enrichment at the expense of the state. For commercial and residential development, the state policy should be to maximize the return from allocation of state land. This means that open land auctions or other transparent market mechanisms should be the default position. Free land may make sense for industrial investment that creates jobs, but this should be treated as an exception that must be justified on a case-by-case basis.

Even in the case of low-income housing, free land is a problematic policy. It distorts the market. It is very difficult to ensure that the poor are the ones that benefit, particularly where governance and enforcement are weak. Other means should be considered, such as servicing and wholesaling land, requiring social housing components in other projects and making development standards more accessible, e.g. reducing minimum plot sizes. See *National Housing Policy 2.1.4*.

MoF is the custodian of the nation's assets, with an over-riding duty to protect them and to ensure maximum return on their allocation, unless there is explicit legislative or regulatory direction to the contrary for specific purposes. If government policy is to provide incentives to investors, MoF has the responsibility to ensure that the incentive is only as much as is needed to make the project feasible, and that the investor complies with the agreement. There is no institutional framework in Iraq for implementing these mandates.

Above we pointed out the need for an institutional framework that mandates coordination, organizes information and makes it accessible, and standardizes procedures for decision-making. This institutional framework can incorporate the custodial mandate of MoF.

It may be possible to design and implement this institutional framework without legislation, through action of the Council of Ministers. Because the system is essentially a procedural one, under which ministries are disciplined and coordinated in the manner they carry out their functions, Council of Ministers could form a high-level interministerial committee to oversee the system.

Best Practices

“Even advanced economies have generally managed their public land assets very poorly in the past, and many countries are only now launching reform efforts and improvements. There are numerous good practices, but such experiences are scattered, not systematically analysed, and not easily accessible or properly documented.” (Willi Zimmerman, *Effective and Transparent Management Public Land Experiences, Guiding Principles and Tools for Implementation*, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008).

The Canadian federal government’s system for management and allocation of government-owned land is perhaps the soundest model available. Interestingly, it is not based on a comprehensive statute but on the status of the most powerful committee of the Cabinet (equivalent to Council of Ministers), called the Treasury Board. See Appendix F for a description of this system.

An appropriate regime would include the following:

A state land policy and regulatory framework

- Parameters for what can and cannot be done with state land
- Responsibilities and decision-making processes
 - High level inter-ministerial body to oversee the system
 - May include devolution to regional and local governments
- General parameters for allocating state land
- Guiding principles
 - For example, the state should only keep land to support delivery of government programs, and divest itself of surplus land.
 - For example, the state should maximize the financial return to the state when land is allocated.

Good governance

- Clear and unambiguous responsibilities
- Accountability and methodology in systems of land allocation, disposal or use
 - Limit discretion of officials
- Inventory and public information on state land assets
- Accessible and enforceable mechanisms to protect citizens’ rights to compensation for compulsory acquisition

Dealing with informal occupiers of state land

- Regularisation where appropriate (avoids conflicts, human rights violations and eviction)

With respect to *Law on Expropriation*, it has been suggested that a new law should be drafted. (See *Legislative Assessment Preliminary Report, Core Area Nine: Agricultural Regime*, page 78.) Further study and analysis are needed. It may be that problems relate more to practice than to the law.

Recommendations Concerning Administration of State Land

For Policy Consideration

- A comprehensive regime for state land administration based on best practices, headed by an interministerial body.

Legislative Action

- Complementary to policy consideration, preparation of a draft regulation that would establish the regime. (Further analysis may determine that legislation is needed in order to establish the system, or that amendments are needed to existing laws. If so, draft legislation will be prepared.)

A.4 DRAFT LEGAL TEXTS PROPOSALS

We do not provide draft legal texts in connection with this assessment.

The area of property rights related to land regime is very complex, with many interconnecting laws, and laws that are linked to other sectors such as public finance. Laws on land carry historical, cultural and institutional weight, and for that reason are not amenable to replacement by model laws from international experience. Such laws contain implied policies that have not been discussed and their feasibility needs to be considered. We found early in our work that it was necessary to have a policy basis to support reform of land laws, and this has been our concentration to date.

Therefore we are not prepared to prescribe proposals for draft legal texts on the basis of our assessment of the legislation. More capacity building of Iraqi officials, consultation with stakeholder groups, and policy discussions must take place. Progress has been made in that regard, in that the Land Tenure Working Group has recently agreed the Berlin Statement on a Land Policy for Iraq, which when approved by Council of Ministers will formalize a process for establishing land policies.

Amending and new legislation and/or regulation is recommended in this assessment and proposed by the Berlin Statement. Draft legislation will be prepared in the next stage of the work.

A.5 INTERCONNECTION WITH OTHER LEGAL CORE AREAS

Basic Legal Framework

The *Constitution* provides for the recognition and protection of property rights. The *Civil Code* covers the area of land tenure comprehensively.

Investment Regime

The *Investment Law* allows land to be provided free or at concessionary prices for investors, and exempts state land allocation for investment from the requirement for public auction. It also allows foreigners to own land for the purposes of implementing housing projects.

Privatization

The state owns land that is surplus to the needs of ministries that control it.

Agricultural Regime

Land tenure is an important topic for reform of the agricultural sector. Much land is leased to farmers by MoA. Other land is in private hands under *tassaruf*.

Taxation and Customs

Land-related taxes are part of the fiscal regime. They include taxes on rental property, vacant land and land transfers.

Banking

The present legislation has provisions that hinder mortgage lending on residential property.

D INSTITUTIONAL ASSESSMENT

D.1 Real Estate Registration Directorate (RERD), Ministry of Justice

The RERD comprises a central office and regional offices throughout the country. Sub-offices report to the regional offices.

D.1.1 RERD Central Office

As can be seen in Appendix 1 the head of the RERD is the Director General. The Director General has one assistant Director General. Below those two positions are six offices, each headed by a Director. The six offices are further divided into specialized offices.

Legal/Audit Department. The substantive work of the RERD is conducted through this Department by its control of registration operations in the branch offices. The word “audit” in its title refers not to financial matters, but to the audit of the procedures and rules to be followed in the registration of properties in Iraq. The following offices carry out the work of this Department.

The *Registries Office* maintains a second copy of all registration records generated throughout Iraq. Currently these records are maintained in paper format. It has been estimated that about thirty percent of the duplicate records have been destroyed in wars and looting during recent years. The *Planning and Follow-up Office* receives statistical reports monthly from the branch offices and compiles the offices monthly and annual statistical reports. The office also follows up on citizens complaints.

Four separate offices in the Legal/Audit Department handle legal matters affecting the RERD. The *Claims Office* defends the Registry against lawsuits brought against the RERD. The *Studies Office* which includes the section known as *Relations Unit* processes requests and questions arising from government offices outside the RERD. The *Investigation and Inspection Office* conducts internal investigations into allegations that the RERD’s employees failed to follow the correct procedures in processing registration transactions. The *Confiscations Office* deals with the inspection, confiscation and seizure of private properties.

The Department also houses the *Computing Section* is responsible for all technical activities in the RERD, including installing and maintaining all computer and technical services needed by the RERD. In addition to its work with computerisation, the Computer Department supervises the *Microfilm Office*. This office is responsible for microfilming all property records held in all RERD Offices throughout Iraq. Currently microfilming efforts have stopped. Destruction of records following the Gulf War and the most recent conflict has also hampered efforts to preserve all records by microfilming.

The *Advisory Board* is responsible for, amongst others, (i) preparing special instructions for the implementation of Law 43/1971; and (ii) studying requests for the cancellation of registration.

Administration Department. This department is responsible for all personnel and other non-financial administrative matters in the Registry. As its name implies, the *Personnel Affairs Office* manages personnel matters. The *Administrative Services Office* handles routine administrative affairs for the office. The *Archive Office* maintains copies of all incoming and outgoing correspondence. The *Printing Office* is responsible for the printing and copying of books and forms.

Financial Affairs Department. This department coordinates all financial matters in the RERD. There are four offices in this Department. The *Pay Roll Office*, the *Payment Office* which includes the *Registers*

and accounting organization section, the Warehouse (which maintains and disburses supplies and forms used in the Financial Affairs Department), and the *Balance Office* (which prepares the annual financial statements of the Department).

Technical Affairs Department. The Technical Affairs Department oversees the maps, drawings and plats used by the RERD. The *Drawings and Maps Department* maintains all the maps the RERD receives from other government sources, such as the cadastral maps from the Ministry of Agriculture (MoA). The *Technical Studies Office* studies mapping-related questions raised by the RERD's own employees or by those outside the RERD. The *Technical Audit Office* functions much the same as the Search/Inquiry Office in the Legal/Audit Department; it investigates claims that the RERD's employees failed to follow correct procedures with respect to mapping issues.

Accounts Auditing Department. This Department handles all financial audits pertaining to the RERD. The work of this department is divided among the three offices: the *Financial Inspection Office*, the *Follow-up Office* and the *Financial Auditing Office*.

The office facility is leased, damaged and largely incapable of being used as work space.

D.1.2 Organisation of the RERD – Regional Offices

The RERD maintains 27 primary offices throughout Iraq (of which nine are in the territory governed by the KRG). There are also 66 sub-offices of which there are 36 in the KRG.

The same functions are performed in each regional office, but the internal structure of the offices may vary because in smaller offices multiple functions are combined into a single department. In a fully-staffed office, the departments are as follows:

- The Intake Department. The Intake Department has two functions. First, personnel in this department enter transactions into the daily record book. This is a listing of all filings in the RERD each day. The second function of the Intake Department is to keep record of all correspondence coming into and going from the RERD.
- The Registration Department. The basic work of the Registration Office is carried out this department which processes all the transactions presented for registration. This Department also audits the transactions to ensure the proper registration procedures have been followed.
- The Papers Department. This department assigns sequence numbers to real estate parcels not having such numbers, indexes all papers and documents and places the official registration documents in the proper registry folders. In some offices it is combined with the Registration Department.
- The Record Book Department. The primary responsibilities of this department are to maintain all the record books, including all the record books from Ottoman times. The department also answers requests for information from property owners and make copies of the documents owners need. It also prepares documentation regarding cases not permitted to be registered and process liens on property.
- The Technical Department. The Technical Department handles all the maps and cartographic work of the local RERD office. Parcel maps as well as individual plots of land are prepared in this office. Technical Department staff conducts observations of properties if there is no Observation Department in the local office.
- Observation Department. Personnel in the Observation Department make the views required when property is sold. These views are conducted to ascertain the value of the properties and to ensure

compliance with the documents in the RERD Office's files. This department is sometimes combined with the Technical Department.

- The Auction Department. The Auction Department handles all real estate sales ordered by the court where there has been a foreclosure on a mortgage.
- The Financial Department. The Financial Department keeps all the financial records of the office, pays all the bills, including employee salaries and handles the administrative functions of the office. In addition, the Financial Department provides a treasury function, receiving and processing all funds received by the RERD Office.
- The Typing Department. This department is often combined with the Intake Department.

D.1.3 RERD Records

G.1.3.1 Registers

The registers in the local registration offices have been generated over many years, under a number of different laws governing the registration process. Perhaps the oldest records in the system are the registers implemented under the Ottoman Land Code of 1858. While the Real Estate Registration Act 43/1971 does not necessarily give these records legal significance, they nevertheless are kept because they contain valuable information on the history of land transactions. Another set of records maintained in the local registry offices are registers established under (now repealed) Law Number 29 of 1938. These records cover agricultural lands and do have the same legal status as the current registration records.

The first registration law of Iraq was Law Number 59/1935 – the Law of Origins of Real Estate Property in *Tapu* and it is this system that is primarily used in Iraq today

Type of Record

- The “Basic Book”: This an index book containing entries regarding conveyances, gifts and *waqf* properties
- “The Registration Records Book”: An index book containing entries (i) regarding mortgages (held by private and state banks); (ii) mortgages held by “state company” banks e.g. Agricultural Bank; (3) documents affecting title filed by the court and other government offices; and, guarantees offered by individuals to support others who receive government benefit
- The “Personal Book”: an index to natural and juridical entities owning property interests
- Folders: Individual files on each property, indexed by property number, containing legal documents affecting title to that property

G.1.3.2 Maps

Maps in the local RERD offices reflect the type of land in the areas serviced by the respective RERD offices. Maps of properties in built-up areas have different sources than maps of agricultural areas. There are six different kinds of maps used in the local registry offices, as follows:

- Sketch maps, Municipalities Maps and Maps of Position. These are primarily maps of subdivisions in urban areas, although they may cover more rural areas as well. For Baghdad, these maps are initially prepared by the Mayoralty Design Section. For all other areas outside of Baghdad, the maps are initially sketched by MMPW, with the actual map prepared by the design sections of the municipalities. These maps are at scales of 1:500 to 1: 20,000, depending on the area, and do not establish legal boundaries. They show preliminary parcel boundaries, streets and public facilities. They are not updated. The originals are kept in the municipal offices, with copies in the local RERD offices.
- Original Maps and Land Maps. These are also known as Real Estate Maps. From the three types of maps described above, personnel in the Technical Departments of the local RERD offices prepare the Real Estate Maps which definitively show the legal boundaries of the parcels in the

subdivisions. These maps show parcel boundaries and streets, and are prepared at scales of 1:100 to 1:20,000, depending on the type of area being mapped. The originals of these maps are kept in the local RERD offices. They are not updated; if changes need to be made in the maps, new maps are prepared in place of the outdated maps.

- Cadastral Maps. These maps are for rural areas and were formerly prepared by the Settlement Committee for Land; now they are prepared by the Land Acquisition Committee of MoA. These maps establish the legal boundaries of the properties. Their scale is same as the Real Estate Maps, 1:100 to 1: 20,000. The Cadastral Maps show parcel boundaries, topographic features, and the dimensions and areas of the parcels. New maps are prepared when changes are made to the map features. The original maps are kept in the local RERD offices.

Copies of all registrations are held in paper form at the RERD Central Office since 1991 with the exception of the records for the Kurdish region

D.1.4 Registration Procedures

The procedures followed in the registration of real estate conveyances are depicted on the flowchart attached as Appendix H. As can be seen, the procedures are somewhat complex, involving as they do the offices of several different agencies or government bodies, including the local RERD office, the local tax commission office and the office of the Municipality in which the real estate is located.

The process can be more simply described as follows: The seller and buyer appear in the local registration office having jurisdiction over the property to be conveyed. If a Form 25 showing the current owner has not been prepared beforehand, RERD personnel prepare that form. The seller and buyer provide the RERD personnel with their names and other information needed for Form 59, the official document that effects the conveyance. If the transaction takes place in one of the offices using the Documentation System, the transaction is entered in the Daily Book; otherwise the transaction is entered into the Basic Book. The title is then audited and within seven days the seller is given a list by the RERD explaining the problems with title the seller will need to correct before the transaction may be completed.

The next step is to go to the applicable *Municipality* or *Mayor's* office to do two things. First, municipal officials must view the property to insure that it conforms to as-built drawings on file in the municipality. If the property is nonconforming, the seller must pay a penalty and new as-built drawings must be prepared. Next, a check must be made regarding unpaid fees for municipal improvements or charges. Any outstanding fees must be paid. Once the appropriate fees, if any, have been paid, Form 59 is then stamped by municipal officials.

The seller then must go to the local tax commission office. Checks are made for the applicability of three taxes – the Vacant Land Tax, the Real Estate Rental Tax and the Real Estate Transfer Tax. If either of the first two of these taxes is due, they must be paid at this point. If Real Estate Transfer Tax is due, a committee must be formed to view the property. The property is then viewed and valued. A detection report is prepared showing the value of the property. If the seller disagrees with the value stated in the report, an appeal may be filed but the decision of the board to which appeal is taken is final. The local tax commission then processes the detection report, verifies that the seller has paid either the Vacant Land Tax or the Real Estate Rental Tax, as appropriate, and then computes the transfer tax bill, which must be paid at that point. The transfer is registered in the local tax commission office, the Form 59 is properly stamped and the file is returned to the local RERD office.

In the local RERD office, any encumbrances are cleared, registration fees are paid and a temporary certificate of title is issued to the buyer. The transaction is then audited for compliance with laws and

regulations, and once compliance has been ascertained, a final Form 59 is issued and placed in the file for that property.

As can be seen the procedures to be followed are cumbersome and time-consuming procedures. At least three different offices must be visited for each transaction. These offices are often in different locations, necessitating travel between the offices, and in many cases the offices must be visited more than one time in order to complete a transaction. It has been stated that a residential real estate transaction takes about one full month to complete on average.

Whilst, The Kurdistan Regional Government (KRG) is implementing real estate registration under the Real Estate Registration Law 43/1971 there are a number of procedural and technical differences to those practiced in the rest of Iraq including:

- Form 59 is not sent to the Municipality office and hence there is no inspection for development control/change of use purposes
- Land and real estate is not valued in accordance with previously set regulations of the Public Directorate of Real Estate Registration
- Determination of inheritance tax
- Acts of sale are computerised
- Contemporary bills of sale Form 23 are not issued as is the case in the Federal Government offices but are issued in Form 25 when the verification of the transaction process is finalized
- Registration fee is 1% of the estimated value of the real estate as opposed to 3% in the rest of Iraq

A number of issues have been identified with the present system of registration:

- With the exception of offices in the KRG where there has been some computerization, most if not all RERD records are in hard copy format and are stored in separate dossiers. Information is recorded manually into paper registers. It is understood that there has been some computerization in Hilla in Babil Governorate.
- There are no computerized databases at either the regional or national level and there is therefore, no accurate, up to date aggregated data on numbers and types of property ownerships and transactions.
- Forgery of title deeds. It has been variously stated that this has become more commonplace since 2003 (mostly anecdotal reference). It appears that most cases involve properties formerly owned by the senior officials of the Hussein administration where private individuals have forged title deeds to claim prior ownership rights. The Director General indicated that he had issued instructions against such activities including:
 - Rejection of application for title,
 - And filing suit against the accused
- Multiple ownership claims. This has increased sharply with the increase in number of returnees who were forced off their properties prior to 2003. Current “occupiers” were given title deeds to properties, whilst in many cases the former owners also have title deeds. The CRRPD is addressing property expropriation issues and the RERD provides some assistance in reviewing the deeds and determining their legitimacy.
- Completeness of the coverage of records is dropping as a consequence of the increased incidence of informal settlement. Some owners are sub dividing and selling plots of land, and whilst there may be some kind of contract existing between the buyer and the seller, the sale is not registered with the RERD, no registration fee, transfer fee (stamp duty) or building permit fee and hence there is no building permit issued prior to construction. There have been a number of attempts at land tenure regularisation in these informal areas but no systematic approach.

There has been no information sharing between The RERD Central Office and the Kurdish Provincial Regional Office since 1990.

D.2 Ministry of Finance

MoF is mandated with recording, protecting and consolidating state land and property, whilst the Baghdad Mayoralty Properties Directorate is the custodian of land and properties within its boundaries.

The *State Properties Directorate* has the mandate to: (i) organise the use of Government properties which may be sold, rented or otherwise assigned for the government or natural and juridical persons; and, (ii) provide legal consultation to other Government offices regarding their property portfolio and participate in the drafting of real estate related legislation. The Directorate is comprised of eleven sections.

The Ministry distributes state lands (by order) to ministries and municipalities (through MMPW). The Ministry expropriates lands according to the Expropriation Law 12/1981 applied to urban and agricultural land as well as to freehold and other rights by virtue of the Consolidation of State Land Categories Law 53/1976.

The *General Tax Commission* is responsible for the collection of taxes under the income, real estate, inheritance and vacant lands laws.

D.3 Ministry of Municipalities and Public Works (MMPW)

The MMPW was established through resolution 11/1994 (based on Law of Municipalities 165/1964 and Law 80/1970) and took oversight of the municipalities and governorates from the Ministry of Interior. It is understood that the Ministry is presently undergoing restructuring.

This Ministry is allocated land by MoF according to Law 80/1970 for extending the boundaries of the municipalities. The MMPW in turn distributes or sells lands through public auctions.

The Ministry also leases land for commercial and public buildings and green areas in Municipalities to private sector or authorities according to Article 12 Law 32/1986 as amended. Prime residential land is treated as “commercial” land and is allocated through auction. Industrial land leases are set by Law 20/1998. The Ministry also approves physical master plans for municipalities as well as allocating land to the appropriate sectoral Ministries for infrastructure and services.

Ultimately lands in the municipalities are held by various Ministries e.g. Housing, Agriculture etc.

The Ministry and the Mayoralty of Baghdad are the only governmental authorities that provide land for different uses.

The unit within MMPW responsible for urban planning is the General Directorate for Physical Planning (GDPP) the responsibilities of which are defined under Law 11/1996:

- Preparing structural plans for governorates
- Preparing physical and detailed plans for cities and villages
- Undertaking planning studies
- Studies for administrative boundary readjustment, and
- Urban designs for government projects in the governorates.

Physical plans exist for all the main cities and towns in Iraq but many having been prepared in the 1970s are outdated. The Physical Plans are regulated by Law 25/1995. In the case of Baghdad the Mayorality of Baghdad decides land use within the Mayorality's boundaries through developing and updating a master plan for the City of Baghdad.

Amongst the activities of the Municipalities are the:

- Implementation of city physical plans. Capacity however, is limited and coupled with their lack of authority to raise revenues and ability therefore to carry out infrastructure improvements makes it difficult to implement the plans. It has been noted that another factor undermining the implementation of physical plans is as a consequence of the "political patronage system".
- Classifying land use. Re-classification of land use is governed by laws and regulations issued by the Ministry and the local Municipality Directorate. The procedures to change a property from residential to commercial, for example involve:
 - The owner applies to the Municipal Unit in the property region, asking its approval for the category change.
 - A committee from the *Amanat* (usually consisting of an engineer and a surveyor) is established to examine the real estate and determine whether or not the application is legitimate.
 - After the committee approves the application, it is sent back to the *Amanat* through the Municipal Unit.
 - The *Amanat* requests that the Real Estate Registration Office ensure that the Title Deed is legitimate.
 - A private engineering firm, deemed reliable by the *Amanat*, designs a set of new commercial building sketches. If the sketches are approved to fit the related conditions, then an examining committee (again, consisting of engineers and surveyors) is established.
 - Approvals from the Water and Electricity Departments must be obtained to confirm the adequacy of the new building.
 - A certificate from the Tax Directorate should be obtained to confirm that the property is not mortgaged or sequestered.
 - An approval from the Ministry of Municipality and Public Works (MMPW) is needed to confirm soil analysis and groundwater adequacy.

D.4 Ministry of Water Resources

The General Directorate for Survey within the Ministry is the main governmental authority that represents the main source of all maps in Iraq. Maps for cities and towns are available in different scales as well as satellite imagery and digital aerial images i.e. there are administrative boundary maps for every governorate, base map for Baghdad at the scale of 1:500, land use map at 1:1000 scale as well as utility mapping.

D.5 Ministry of Construction and Housing

Law 62/1987 defines the duties of the Ministry. There are three commissions within the Ministry: Housing; Building; and, Roads and Bridges.

D.6 Ministry of Agriculture

The General Commission of Agricultural Lands (GCAL) is one of the departments of MoA which monitors the implementation of the agricultural legislation and for all activities related to the regulation of agricultural properties.

The total area agricultural land under the administration of GCAL is about 22 million Dunam and is classified as follows:

- Governmental lands.
- Private Lands.
- Lands owned by the government and given to individuals through *Tasaruf*.
- Endowment

The GCAL includes the following sections:

- Agricultural Contracts Section: this section reviews all the contracts according to Law 35/1985 concerning the investment of agricultural lands by natural and juridical persons individuals. The total lands rented according to law 35 are approximately 10,000,000 Dunam. It also reviews the contracts related to resolution 364/1990 and the contractors according to law 117/1970 where the land rented accordingly (2,000,000) Dunam also Resolution 376/1990 and resolution 233/1987 related to the compensation of Al-Qadisyia Dam lands .
- The Technical Section: responsible for preparation of maps.
- Ownership Regulation Section: Responsible for: (i) the implementation of Law 30/1985; (ii) the lands of agrarian reform according to law 117/1970; (iii) replacement decisions according to law 276/1973; (iv) law 138 /1971 related to the compensation for the purposes of Ministry of Irrigation; and, (v) the decisions of monetary compensation according to law 90/1996 and Law 117/1970.
- The Verification Section: This section is responsible for the confirmation of lands rights according to law 117/1970; law 95/1975; resolution 702/1973; resolution 1571/ 1978; instructions 28/1971; and resolution, 1189/1978 and provide the information to the Real Estate Registration Directorate
- The Assignment Section: this section is responsible for the assignment of lands to the governmental agencies and the implementation of Laws 1/1974; 115/1980; 155/ 1982; 455/1983; 995/1985; 350/1985; 732/1980; and, 220/1974.
- The Legal Section.
- The Distribution Section: responsible for the ownership transfer to successors according to regulations 69/1972 and 2/2000
- The Registration Section: this section is responsible for the regulating the ownership at the RERD according to law 1189/1978.
- Other sections include: Planning; Computing; Accounting; Auditing; and, Administration.

D.7 Ministry of Environment

The Iraqi Ministry of Environment (MoEn) was established in 2003 under CPA Order 44. Prior to the formal constitution of the Ministry, there was a well developed system of environmental governance and monitoring A Human Environment Directorate was created under the Ministry of Health in 1972. This was followed, in 1986, by the enactment of a law establishing an Environment Protection Centre (EPC) within the Health Ministry. With the introduction of the Environment Protection and Improvement Law in 1997, the EPC was transformed into the Environment Protection and Improvement Directorate (EPID). The law was then amended in September 2001, extending the mandate and responsibilities of the EPID to address broader environmental issues. At that time, the EPID was designated as an independent body and formally dissociated from the Ministry of Health.

The Ministry is mandated with preparing an environmental policy and setting up a regulatory framework to protect the environment against causes of pollution. The Ministry has authority to fine and close establishments either temporarily or permanently in case of repeat violations.

D.8 Land Committees

All Government Ministries are represented on this Land Committee established under order 57/1987. The committee is mandated to make decisions related to secure all necessary approvals from the relevant sectoral ministries for land development projects, where the land falls outside of municipal jurisdiction.

Land allocation for different development projects outside of municipal boundaries, is decided by the Land Allocation Committee for Development and Investment Projects established by resolution no.2111/2005 of the Cabinet of Ministers.

Yet another committee for land allocation exists in the Ministry of Planning for allocating land to investment projects. MoF allocates the land.

D.9 Courts

The Judiciary is independent and represented by courts of different kinds and levels, and they issue their rulings according to law. No authority can interfere in the judiciary or in the affairs of justice. The Federal Judiciary includes the Supreme Judiciary Council, the Supreme Federal Court, the Federal Cassation Court, the Prosecutor's Office, the Judiciary Inspection Department and other federal courts.

The Iraqi court system is divided into the Civil Courts, Courts of Personal Status, and Criminal Courts. Land ownership and boundary disputes are dealt with by the Civil Courts.

The court hierarchy consists of:

Courts of First Instance: Article (21/1) of the Judicature Act provided that "a court (or more) of first instance is formed in the center of each governorate or province. It may be established in districts. There are 119 Courts of First Instance. The court of first instance sits as a single judge. It decides on actions and matters within its powers as determined by the law. The Civil Procedure Code determined the powers of this court as follows:

- It looks into civil actions provided for in Article (31) of the Civil Procedure Code. Its judgments in this case shall be in the last degree that can be appealed by cassation before the region's appellate court situated within its geographical jurisdiction.
- It decides on civil actions provided for in Article (32) of the Civil Procedure Code. Its ruling shall be in the last degree capacity and is subject to be appealed by way of cassation before the Court of Cassation, unless the action is more than one thousand (1000) Iraqi dinars in value. In this case its rulings shall be of the first degree subject to be appealed.
- It also decides on summary actions not to be delayed.

Courts of Appeal: Iraq is judicially divided into 14 appellate regions. The appellate region is managed by the appellate court situated at the center of the region and is considered the high Council of Judges in this region. It is made up of the presiding judge, a number of his deputies and judges as needed. It exercises the powers defined for it by the law. All the courts coming within its geographical domain are linked to it administratively. The court undertakes the distribution of work among the judges of these courts and provides them with the administrative staff and the material requirements from its allocated budget.

The Judicature Act entrusted the Chairman of the Court of Appeal with the task of supervising the appellate courts and their activities in the region of his jurisdiction and the distribution of work among the court's judges. The Act further provided for the formation of a board at each appellate region. The board is made up of the presiding judge of the appellate court, his deputies and the judges sitting as members of

the appellate court. The board is called the "Appellate Region Board". It undertakes the study of the difficulties and problems confronting the courts in the appellate region and makes appropriate suggestions to address them. It also submits proposals to improve the methods of operation and improve performance at courts. The board meets at least once every month and may be invited to meet as needed. A quorum of at least three-fourths of the members of the board must be present for the Board to meet. The court's judicial powers according to Article (34) of the Civil Procedure Code are the following:

- Decide on appeals against judgments delivered by the courts of first instance in first degree in actions of a value not to exceed one thousand (1000) Iraqi dinars.
- Decide on judgments on bankruptcy, corporate liquidation and other judgments as provided for by the law. In this capacity it is a court of second degree.
- The appellate court has another judicial function as it is considered a cassation examination court in some cases including appeals by cassation against judgments delivered by the courts of first instance where these courts exercise the powers of the (annulled) conciliation (magistrate) courts. It also looks into, in cassation capacity, the decisions delivered by summary courts and allegiance courts and the other decisions provided for in Article (216/1) of the Civil Procedure Code. It also decides on the rulings and decisions within its powers as determined by the law.

Court of Cassation, The Court of Cassation is the highest judicial body in Iraq. The Judicature Act entrusted the Court of Cassation's administration and the regulation of its judicial functions to the Court's Chairman and members. It established a board made up of the court's Chairman and his deputies called *hay'et el-re'asa* (or, the presiding board). The task of this board is to select the chairs and members of the courts. This is a good safeguard for the independence of the court. The Court of Cassation as defined by Article (12) of the Judicature Act is the supreme judicial body that exercises control over all courts. It is made up of a Chairman, five (5) deputies and at least 30 judges as members. The court's premises are in Baghdad. Articles (35), (203) and (216) of the Civil Procedure Code No. 83/1969 define the powers of this court as follows:

- Decide on cassation appeals filed against judgments and decisions delivered by the appellate courts in their original capacity; the courts of instance that are not within the jurisdiction of the appellate court in its cassation capacity; the judgments and decisions delivered by the personal status courts and the personal matters courts (that concerns non-Muslims) and all the matters that come within the power of the Court of Cassation in its cassation capacity according to the provision of the law.
- Examine the judgments subject to mandatory cassation whether appealed or not appealed by the concerned persons in the civil and criminal fields⁸⁷. They are the judgments delivered on the *Baytel Mal* (treasury) or the endowments of the legally disabled, the deeds considered as judgments and judgments of capital punishment or life imprisonment by cassation.

The Court of Cassation includes a number of courts that guarantee it to perform its functions properly. These courts are specialized in deciding on one kind or more of legal actions.

The Court of Cassation is not considered a degree of litigation as it is a court of examination and control. It is not entitled to initiate procedures in an action but it adjudicates in it if it finds that the action is valid for adjudication, where the judgment delivered on it is challenged by appeal based on its powers provided for in Article (214) of the Civil Procedure Code. The judgment it delivers is subject to appeal by the method of correcting the decision at its expanded body.

The Court of Cassation is managed, as previously mentioned, by the court's Chairman. It has an independent budget. Distribution of the work in the court is done by its Presidency Board. It enjoys complete independence being the Supreme Court in Iraq. It is not linked to the Council of Judges and its

Chairman is the president of the Council of Judges as provided for by Section (3) of the Judicial System Independence Application Act No. 12 issued on 8/5/2004. The number of the court's members is currently 24 members including the Chairman of the court and his deputies.

There is also a Federal Court of Cassation, and a new Federal Supreme Court consisting of nine members to be appointed by the Presidency Council. One Supreme Court judge is to preside over the Higher Juridical Council.

The Courts of Personal Status have jurisdiction in all matters of first instance related to personal status of Muslims. Jurors of the Shari'ah Courts are either qadis, or religious judges, or judges from civil courts.

D.10 Commission for Resolution of Real Property Disputes

CRRPD is an independent agency of the Government of Iraq, established to redress certain wrongful takings of real property, including primary rights in rem (e.g. ownership, usage, residence, long-term lease, etc.), during the period from 17 July 1968 to 9 April 2003 as mentioned in section 1.3.15. The jurisdiction, structure and procedures of operation of the CRRPD are governed by the new Statute of the CRRPD, which annulled CPA Regulation 12/2004, (which created the IPCC, the CRPPD's predecessor) as of 6 March 2006.

There are 30 offices with at least one in every Governorate with thirty two Judicial Committees reviewing and deciding claims.

Through the CRRPD process Iraqis may:

- Claim a real property right lost wrongfully;
- Confirm their right to the real property currently used or owned; or
- Defend their right to own or use real property against someone who claims it.

As of the beginning of 2009, approximately 153,000 claims had been filed with the CRRPD (approximately 55,000 of these concern properties located in Kirkuk.) Today, the CRRPD has received close to 135,000 claims, out of which more than 55,000 concern properties located in the Kirkuk area. The total number of claims that have so far been decided amounts to little over 37,000. On its face, the latter figure is quite impressive, giving the complexity of the CRRPD procedures and, especially, the situation in Iraq over the past few years. In terms of the actual outcome of the CRRPD the situation is, however, slightly less positive than the figures may lead one to believe and this for a number of reasons.

The first reason is that, according to the CRRPD, approximately 9000 decisions will have to be re-reviewed as a consequence of the changes introduced by the CRRPD Law. As the Law changed the valuation criteria for compensation, all compensation decisions that were decided in application of the IPCC statute now have to be reconsidered as to the awarded amount. At the same time, also restitution decisions involving a secondary occupant will have to be re-reviewed, as the CRRPD introduced the formal right of the secondary occupant to receive compensation in case the property is returned to the original owner. It is unclear at the moment how long this re-review will take.

The second reason is that a significant number of successful claimants face difficulties in having their CRRPD restitution decisions enforced. While accurate figures regarding the enforcement rate are lacking and likely to differ from region to region, it is generally assumed that a considerable proportion of final restitution decisions have remained un-enforced. Anecdotal evidence suggests that until recently this was at least in part due to the unwillingness of certain Property Registration Offices to re-register property in name of the original owner on the basis of a CRRPD decision. Of late, this situation appears to have

improved after repeated interventions by the Head of the CRRPD. A continuing problem, however, appears to be the difficulties faced by the Enforcement Department of the Ministry of Justice to evict unwilling current occupants due to the prevailing security situation and the lack of capacity. Especially in areas with high rates of violence, the Department and the Police are said to lack either willingness or capacity to enforce CRRPD restitution decisions against unwilling occupants.

A third reason why the situation is less positive than the decision rate appears to suggest is the low rate of enforcement for compensation decisions. It was not until December 2006 that the CRRPD and MoF agreed on a procedure to pay compensation to successful claimants and this despite the fact that the Iraqi State Budget for 2006 had specially allocated \$200 million for CRRPD compensation payments. Initially reluctant to get directly involved with the payment of compensation - a responsibility which the CRRPD Law lays with MoF - the CRRPD is now itself paying out compensation to the claimants with funds drawn from an account funded by MoF based on groups of position compensation decisions presented to it. So far, four groups of claims have been compensated, in total amounting to little more than one hundred cases. It is clear that the compensation rate will need to increase drastically for the CRRPD to live up to the promise of its statute.

The CRRPD was, supposedly, established to provide a legal mechanism for resolving property disputes in an organized, fair and consistent manner regardless of the parties' ethnic background, sect, religion, or gender. The CRPPD however, is not a legal mechanism in any sense and use of the term (see Section 1.3.16 above).

If, instead of using the CRRPD process, Iraqis return to their property that is occupied by others, and force its occupants to vacate it, they could be committing a criminal offense.

Voluntary Settlements The CRRPD encourages Iraqis to consider voluntary settlement of their claims through reconciliation or amicable resolution, as it may hasten the resolution of their claim. The CRRPD can help parties who reached an agreement privately to document their settlement.

Parties who reach an amicable agreement need to contact a CRRPD Judicial Committee. After reviewing the settlement, the Judicial Committee will certify it and thus give it legal force. If any of the parties is not satisfied with the review and decision of the Judicial Committee, they have the right to appeal before the Appellate Commission.

Decision by the CRRPD Judicial Committees. If a claim is not resolved, voluntarily, it will be decided by a Judicial Committee. The CRRPD Judicial Committees will review all submissions relating to a particular piece of property and decide the case in question. The Judicial Committees will collect additional evidence from the appropriate Real Property Registration Department and government entities and hold at least one hearing. They may also request expert opinions on the claim. There are 32 Judicial Committees.

The Chairman of the Judicial Committee decides the claim and the appropriate remedy. If no appeal is filed within 30 days after the date on which the parties are notified, or deemed as notified, of the decision, the decision will be ratified by the CRRPD. Ratified decisions are binding and enforceable by the competent authorities where the property in question is located.

Appeal A party may appeal a decision of a Judicial Committee within 30 days following the date of being notified, or deemed as notified, of the decision.

The CRRPD branch will forward the appeal along with the case file to the Appellate Commission in Baghdad. The Appellate Commission will decide the case by majority vote of its seven members. If the

Appellate Commission disagrees with the decision of the Judicial Committee, it will remand the claim to the Judicial Committee for reconsideration in light of the Appellate Commission's decision.

A party may also challenge the decisions of Judicial Committee through retrial or the objection of others as stipulated in the Iraqi Civil Procedure Code.

It has, variously been stated that there are a number of challenges facing the CRRPD including:

- Lack of power to establish expedited procedural rules. The Judicial Committees must decide cases according to Iraqi Civil Procedure Code, which requires individual hearings in every case and use of expert testimony (as opposed to claims grouping and matrix valuation techniques)
- The Government (MoF) systematically, appeals every case and refuses to negotiate out of court settlements, further delaying the claims resolution
- Funding for compensation awards is constrained by its compensation budget which is determined by MoF.
- Public image – the Iraqi public is generally suspicious of corruption in any claims system and so the CRRPD is perceived as “biased” in some quarters.

E. ROADMAP TO ENHANCE THE PROPERTY RIGHTS / LAND TENURE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

On 5 March 2011 the Working Group on Land Tenure and Utilisation adopted the *Berlin Statement on the Development of Land Policy and Land Management in Iraq*. See Appendix G. The *Berlin Statement* is the basis of the roadmap for the enhancement of the legislative and institutional framework.

PROPOSED PROGRAMME

Component 1: Land Management Policies Developed and Institutions Strengthened

2011

- Workshop on legal issues and adoption of policies to support legislative reforms
- Detailed road map for the policy process
- Establishment of land policy committee and secretariat
- Establishment of thematic working groups
- Conference on informal settlement upgrading and resettlement
- Study and workshop on custodian land management
- Study and workshop on informal, customary and lesser forms of tenure
- Draft amendments to Civil Code, Real Estate Registration Law, and other related laws
- Draft legislative or regulatory regime for state land management and allocation

2012-2014

- Land policies approved by Parliament or Government
- Feasibility study on legislative amendments
- Feasibility study on new state land management regime
- Adoption of laws and regulations
- Establishment of and support to land policy institutions

Component 2: Land Administration Systems Improved and Associated Institutional Capacities Strengthened

2011

- Institutional mapping and assessment, including identifying measures to reduce corruption
- Rapid mapping of land held by state institutions
- Inventory of land information systems
- Study of dispute resolution practices

2012-2014

- Feasibility study on legislative amendments
- Feasibility study on new state land management regime
- Support to institutional changes and strengthening
- Establishment of state land management regime
- Capacity building program

- Land information system
- Support to CRRPD and courts, including institutional strengthening and capacity building

Component 3: Improved Knowledge of Government and Public in Land Reform Process

2011

- Study and recommendations on a public information and consultation system, including interactive website
- Study and recommendations on consultation with and education of lawyers and other professionals
- Strategy for education centre for land management and administration

2012-2014

- Implementation of public information and consultation system
- Implementation of consultation and education program for lawyers and other professionals
- Establishment of education centre for land management and administration

APPENDIX A

LAND TENURE LEGISLATION

The Civil Code (40/1951)

The provisions of the Civil Code have been taken from two sources:

- Majallat Al Ahkham al Adliyya – the Civil Code compiled for the Ottoman Empire, and
- The Civil Code of Egypt.

The Civil Code contains a Preliminary Part and four Books:

- Preliminary Part: Chapter One contains provisions governing the sources of law, application of the law and conflict of laws in application. Chapter Two contains provisions generally defining and describing the basic legal regime of natural and juridical persons. Chapter Three contains the basic general definitions of property and right.
- Book 1: defines the general theory of obligations and sets out the law of obligations.
- Book 2: defines contracts and sales. (The law of lease contracts has been subsequently repealed.)
- Book 3: addresses the law of ownership as well as the principal rights in rem, and
- Book 4: addresses security devices, such as authentic mortgages, possessory mortgages, and privileged rights.

The Iraqi Civil Code recognises the right to complete private ownership of property and vests the owner with the absolute right to dispose of his or her property through the use, enjoyment and exploitation of the property owned, its fruits, crops and anything the property produces.

Property may be owned singly or jointly. Where joint ownership occurs shares in the property are presumed to be equal unless there is evidence to the contrary and each co-owner may avail himself or herself of the whole of the jointly owned property. The Civil Code recognizes the primacy of ownership in that every co-owner is the absolute owner of his share and may lease, sell, mortgage or otherwise dispose of his share without permission of the others. The Code also states that the jointly owned property must be jointly managed by all co-owners.

Article 68 of the Preliminary Part of the Civil Code describes the primary rights in rem. These are:

- the right of ownership and of disposal – full ownership rights in real estate;
- usufruct - *tasarruf*;
- user residence – *'uqr* (abolished by Decision 17/1980);
- *musataha* – alienable, inheritable right to own land for a fixed term of 50 years during which time the land must be developed. On reversion of the *musataha* the improvements become the property of the grantor;
- *mugharassa*. - an inheritable contract in which one person gives his or her land to another to plant it with certain specified trees and tend them for a certain term of years at the end of which the trees and land – or just the trees – will become their common property
- *al musaqat* – a fixed term contract whereby trees are given to someone who would tend them in return for a certain specified share of the fruits thereof.
- *al muzara'a* – an inheritable contract for farming in which the landowner and the cultivator agree to share the resulting crop.
- *shuf'a* (*pre-emption*) – It is a limitation on the right to transfer property.
- servitude including for access, drainage and watercourses – *irtifaq*;
- *waqfs* although these are not covered under civil law, and

- long term leases.

Secondary (accessory rights) in rem are the right of authentic mortgages, possessory mortgages and privileged rights.

Five of these primary rights are described in more depth in Book 3 – the right of ownership and disposal, *tasarruf*, *'akr*; *musataha* and *irtifaq*. Of the others *waqf* is governed by Shari'ah law. Prior to their repeal through Law 67/1973, leases were defined in Book 2. Leases are now covered under Law 87/1979. Book 3 contains articles that set out the rights to ownership per se including:

- The scope of the means of protection and the restriction of the right to ownership.
- Special kinds of ownership including joint ownership.
- The acquisition of ownership ab initio (from the beginning).
- Acquisition of ownership through death (inheritance and wills).
- Acquisition of ownership among living persons through accession, by contract, by pre-emption, by possession.
- The right to dispose of *tasarruf* and emphyteusis (*'uqr*' – Article 1242, "uqr" rights were abolished by Decision 17/1980 as mentioned above).
- The rights of usufruct (which may be acquired by contract or through a testament), use and habitation (dwelling) and of *musataha*, and
- Servitudes. In Iraqi law these are acquired by a contract, by inheritance or by will, and may be created for a fixed term of years.

The Civil Code contains provisions for two types of mortgage:

- An authentic mortgage in immovable property. This is a contract whereby a creditor acquires a right in rem over an immovable by which he or she is preferred over ordinary creditors who are subordinate in rank for purposes of repayment; and
- A possessory mortgage in any kind of property that could be the subject of commerce. It can be defined as a contract by which the mortgagor gives property to be held in possession of a mortgagee against a debt that the mortgagee may collect.

Article 1050 requires for fair compensation to be paid in the case of expropriation of the property.

Iraqi Constitution 2005

Article 23 of the Constitution provides for the protection of private property and states that the owner shall have the right to benefit, exploit and dispose of his property in accordance with the limitations of the law.

This article also states that expropriation of real estate is only permissible where the property is acquired for public benefit and on payment of just and fair compensation.

Finally, Article 23 provides for the right for every Iraqi citizen to own property anywhere in Iraq but that ownership of property for the purposes of demographic change is prohibited. Unless exempted by law no others (foreigners) may possess real estate in Iraq.

Article 27 deals with public assets and the provisions related to the preservation of state properties, their management, conditions for their disposal, and the limits for these assets not to be relinquished shall all be regulated by law.

Article 136 states that:

- The Property Claims Commission shall continue its functions as an independent commission in coordination with the judicial authority and the executive institutions in accordance with the law. The Property Claims Commission shall be attached to the Council of Representatives.
- The Council of Representatives shall have the right to dissolve the Commission by a two-thirds majority vote of its members.

Real Estate Registration Law (43/1971) and as amended by Law 114/1981

This law provides the comprehensive framework under which the process of real estate registration occurs and which supersedes the system of registration of *tapu* established under the Ottoman era. Implicit in the legislation is the establishment of the Real Estate Registration Directorate within the Ministry of Justice.

The Law is comprised of three main sections and a final part:

- Section One contains the basic definitions and also establishes the functions of the Real Estate Registration Directorate. Article 7 defines the three properties that belong to the State: *Ameriya* lands, and the *tapu* and *Alezma*.
- Section Two deals with the registration procedures as well as the registration records (forms, documents and record books). There are special rules in this section for registering property of Arabs from the Gulf States and other foreigners, although subsequently foreign ownership was banned by Resolution 23 of the RCC in 1994.
- Section Three deals with rules for transactions and special registration cases such as *waqf*, easements and wills. The law is very clear that these transactions must be registered so as to have legal effect. This section also sets out procedures for the rectification of the records in case of defect.
- The final provisions allow for the Director General to establish a consultative committee and promulgate regulations.

Law for Regulating the Ownership of Apartments and Floors in Buildings (61/2003)

This law regulates the common areas of buildings and governs the relationship between common owners.

The law lacks detail and does not adequately provide for registration of the condominium at RERD. Article 2 is ambiguous on this issue. The law does not require a description of the units or specification of the allocation of common elements which could lead to disputes amongst owners and which could be avoided if registered at RERD.

Article 4 bases the share of the common elements on the value of the respective units rather than in a fixed way (size of the respective units for example).

Law of Granting Ownership of Governmental Lands and Buildings 3/1960

This law sets out the rules under which State land may be conveyed to foreign governments, communities or charities. If the properties are not used for the purposes for which they were granted, or if the properties remain vacant for a period of 5 years, or if the land granted is in excess of what is needed for its permitted use, the property (or the excess) may be taken back by the State.

APPENDIX B

LAND DISPUTES LEGISLATION

Statute of the Commission for the Resolution of Real Property Disputes, Order no.2/2006

The Iraqi Transitional National Assembly decided to replace the IPCC with the CRRPD. The CRRPD is a sui generis commission – similar to an administrative entity – with its own unique structure and identity.

The IPCC and its successor the CRRPD procedures are broadly based on the Commission for Real Property Claims of Displaced Persons and Refugees established in Bosnia under the Dayton Agreement (Annex 7). In contrast to its Bosnian ancestor however,

- The CRRPD statute eschews the provisions of the Iraqi Civil Code in favour of ad hoc rules designed specifically for the CRRPD and that do not necessarily bear any relation to their counterparts in the Iraq Civil Code. The CRRPD therefore, has exclusive jurisdiction over all claims in its purview. As a result no aggrieved Iraqi citizen with a claim cognizable under the CRRPD Law may bring his or her claim in an Iraqi court.
- There is no set time limit for the CRRPD's mandate.

While the CRRPD has essentially the same mandate as, did, the IPCC, the CRRPD Law introduced a number of important changes e.g. in respect of the treatment of the current occupant of the disputed property, the valuation of the compensation and the composition of the Judicial Committees reviewing and deciding the claims. A real concern of this law is that it is likely to impose a very high financial liability on the Government of Iraq.

The CRRPD is competent for three types of land and property rights violations:

- Confiscation or seizure of property for “political, religious or ethnic reasons” or in relation to “ethnic sectarian or nationalistic displacement”(Art 4.I) (e.g. in the frame of “Arabisation policies”
- Appropriation or seizure of property without consideration, with manifest injustice or in violation of the legally applicable rules (Art 4. II), and
- State property allocated to members of the previous regime without consideration (Art 4.III)

The CRRPD is not competent to provide redress for the destruction of property.

The CRRPD can only rule on land and property rights violations that took place in the period between 17th July 1968 and 9th April 2003 i.e. between the date on which the Ba’athist Party definitely seized power in Iraq and on the date that Baghdad fell to US-led invasion forces. Article 37 allowed for Committees to be established within CRRPD to consider claims for properties that fall within the jurisdiction of this Statute during the period from 14 July 1958 to 16 July 1968, with the work of such committees to be regulated by an annex to this Statute. This has not been implemented.

Claims that fall outside of these dates have to be submitted to the ordinary Iraqi courts. This means for example that “Arabisation Arabs” who were forcibly expelled from their homes in Northern Iraq by Kurdish or other returnees after 9th April 2003 can only go to the Iraqi courts for redress, even though the returnees themselves would have access to the CRRPD. Claimants for the period 14 July 1958 to 16 July 1968 are also required to process their claims through the Iraqi Court system.

Under the CRRPD law all parties to a claim have the right to appeal against a CRPPD Judicial Committee decision. For that purpose the law establishes a Cassation Committee based in Baghdad comprised of seven judges two of which have to be appointed by the Kurdistan government. The Cassation Committee does not rule on the facts of the case only the legality of the decision.

The fact that a single body has to review and decide appeals from 32 Judicial Committees, together with the fact that the CRRPD law provides parties with unlimited appeal rights has led to a huge bottleneck at the appeals level. This is further compounded by the practice of the MoF to systematically appeal all decisions that create a liability for the State. It has been estimated that at the current rate of progress it will take the Cassation Committee some thirty years to finish its projected workload.

The CRRPD law has relatively elaborate rules on remedies including restitution and compensation with a number of differing scenarios. In all cases, the value of the compensation will be determined in reference to the worth of the real estate at the time the claim was filed. The burden to pay compensation to either the claimant or the current occupant falls on the party that first sold the property after its confiscation or seizure, in the vast majority of cases this will be the Iraqi state. Finally the law provides that the successful claimant will have to pay compensation to the current occupant for any improvements that the latter made to the property.

Council of Ministers Decree 262/2008 and Prime Minister's Order 101/2008

In the summer of 2008, the Council of Ministers and the Prime Minister developed a two pronged package that offers limited financial incentives for returning families and an administrative mechanism to facilitate recovery of property for returnees. There are temporal restrictions and is only available to a subset of refugees.

Specifically, the Council of Ministers Decree 262 provides a grant of one million Iraqi dinars for returnees provided that their displacement record is "written off". The decree further allows a grant of rental assistance at three hundred thousand Iraqi dinars per month for 6 months for displaced families that have been occupying the homes of the returnees, provided that they vacate the home. At the end of 2008 approximately ten thousand returnee families had registered to receive the grant, but only a fraction had actually received it.

The Prime Minister's Order (PMO) reiterates that anyone who occupies the home of a displaced person will be considered a participant in that person's forcible displacement under the Ant-Terrorism Law. It further provided a grace period of one month for such occupants to voluntarily leave those homes.

Unlike the CRRPD, the PMO is not an adjudicative process and does not supplant the civil court system. Returnees are free to pursue their claims in court in lieu of the Order 101 process, for example, if they do not meet the eligibility requirements or lack the documentation required by Order 101.

APPENDIX C

REAL ESTATE RENTAL LEGISLATION

Law of Real Estate Renting (Lease Law) (87/1979), as amended by Law 56/2000 and by CPA order 29/2003

This law together with the Law of Real Estate Rental Tax (162/1959) is administered by the Real Estate Rental Tax Directorate, part of the Tax Commission within MoF.

The underlying principle of these laws is that the rent charged for real estate should be a percentage of the value of the property which is set by government officials. The Real Estate Renting Law stipulates the maximum percentage of value which may be charged as rent. The Government effectively, therefore controls the market, rather than allowing it to operate on conventional market principles. The net effect of this is that renting of real estate is taking place outside of the “formal” (if not flawed) legal system. Major revisions or repeal and enactment of a new law will be required to allow the rental market to operate freely on market principles.

The Law of Real Estate Renting is also further restrictive in that Article 20 provides that it is illegal to keep a property vacant for more than 90 days. If this time limit is exceeded then the Real Estate Rental Tax Directorate may rent it. Article 27 prohibits the renting of residential property by the owner, which may be inhabited by a third party.

The law establishes a leasehold interest for the tenant whenever a property is sold by judicial sale (foreclosure). This gives the tenant (defaulting mortgagor) a tenancy for up to five years at a legally prescribed rent of 5% of the value of the property per year. Without the ability to exercise ownership rights, mortgage foreclosure sales do not attract buyers and the banks are forced to become property managers. The result is that there are effectively no mortgages issued for single family homes.

This law (87/1979) supersedes the provisions of the Civil Code and thus prevents Iraqi citizens from availing themselves of its protections. For instance Article 17(1) states if the lessee does not pay the rent within seven days after its due date, the lessor shall warn him through public notary that he/she has eight days from the date of notification to pay the rent due. Thus the lessor may evict the lessee at any time if the lessee does not pay the due rental within 15 days after its due date. Further Article 17(7) states that if the leased estate remains uninhabited for more than 45 days without any excuse the lessor may institute eviction proceedings. Such a legal scheme creates numerous problems for displaced persons as there is no exception in the law which tolls the forty five day period for reasons associated with displacement.

The amendment of the Law by Law 56/2000 gave greater rights to residential landlords to terminate leases as from October 2003. Law 56/2000 was itself amended by CPA order 29/2003 to provide for better protection of tenants.

APPENDIX D

LEGISLATION ON REAL ESTATE TAX

Law on Real Estate Rental Tax (162/1959), as amended by CPA Order 49/2004

According to this law the tax is assessed on either the real estate owner or on the long-term lessee (five years); and on the occupier in the case that the owner or long-term lessee cannot be located. Lessee must pay the tax during the period of the lease if the lessee built property on the real estate.

The law granted total exemption for the following real estate:

- State owned real estate and Real estate that belonging to public institutions and departments if not rented.
- Real estate of Amanat Baghdad, municipalities and subdivisions that are financed by the central government.
- Real estate prepared to store crops, agricultural machines, cattle, and residence of farmer who owns the real property located inside the farm itself, the village or the center of the quarter in which the land is located.
- Unrented real estate that is dedicated to legally approved mosques, churches and the detached real estate used for the residence of the people who serve those religious institutions.
- Real estate owned by legally approved religious groups and charitable foundations and used by them as schools, hospitals, medication centers, orphanages, or senior residences or similar activities.
- Real estate tax exempted permanently or temporarily due to special laws, treaties or agreements between the government and foreign governments or international commissions.
- Real estate owned by foreign states and used as a residence for their political representatives or as their formal offices provided that the Minister approves the exemption based on reciprocity.
- Real estate owned by ministries or religious organizations the revenue or any other rights of which belong to it.
- Real estate whose revenue is dedicated to legally approved formal or semi-formal foundations, charities or scientific foundations provided that the real estate is occupied by those foundations.
- Real estate owned by legally approved political parties, committees, unions, societies of public concern, and athletic clubs provided that the real estate is used for purposes that directly meet the activities of those foundations.
- Real estate dedicated to economic activity provided that the owner of that activity is subject to the income tax on that activity.

Annual rent is considered at the time of assessment as revenue for the rented real estate.

Law 87/1979 was amended by CPA order No.49/2004 which stated that real estate rental tax that is assessed and collected is 10% of the annual revenue from all real estate including the subject's living share from the real estate other than income from sales of real estate, reducing the additional taxes on the revenue of the real estate rent which was 20% of the total revenue. The tax is to be collected in two equal parts; the first is due the first of January of the financial year and the second is due the first of July of the financial year. The subject has the right to pay this tax at the location of his residence, his work location or in the governorate where the majority of his real estate is located.

Real Estate Transfer Tax

The transfer tax is the subject of resolution No.120 dated 27/6/2002. Accordingly a tax is imposed in progressive rates on the value of real estate or usufruct of real estate which is estimated according to the Real Estate Value Assessment Law no. 85/1978 or the transfer value of the real estate, whichever is the higher value. Law 85/1978 established a committee to decide the prices of each real estate within the boundaries of the governorate. Land prices are artificially suppressed by public authorities. Municipal departments set standard prices for different classes of land, which is classified into Momtaz (excellent), first class, second class, third class and fourth class.

The tax is imposed on the real estate owner or one who owns a share of a real estate when ownership is transferred, or usufruct of real estate, by any means of ownership transfer (or usufruct), such as vending, trade, gift, surrender, exchange, barter, compromise, removal of common ownership, liquidation of waqf or transfer to the lessee by contract. The tax is calculated as follows:

- The first ID20 million of the real estate estimated value or transfer price, whichever is greater, is exempted from tax (this amount is apportioned among partners if the land is owned jointly);
- The amount over the exemption stated above is subject to the following percentages:
- 3% up to ID 30 million.
- 4% of any amount over ID30 million up to ID60 million;
- 5% of any amount over ID60 million up to ID90 million; and
- 6% of any amount over ID90 million.

The tax must be paid before the transfer of ownership and there is no differentiation between natural and juridical persons. The transfer tax is payable by the seller. A gift of real estate between a man and his wife or sons is exempted from the tax imposed by this resolution.

Vacant Land Tax

The third type of tax is the tax on the vacant land according to law No.26 Of 1962 and as amended by Law 18/1994. According to that law an annual tax of 2% of the property's estimated value is to be charged, and to be collected from the taxpayer during the financial year it arose. The collection of tax stated in that law shall halt after the expiry of 15 years from the ownership date.

Lands considered as vacant lands:

- Farms with trees are allowed to be cut.
- Lands that are leased to build huts.
- Lands during construction period approved by an estimation committee.
- Demolished houses.

Lands not considered as vacant lands:

- Land used to build real estates (house, building).
- Lands used to construct industrial or economical premises (factory, market, etc).
- Lands used for agriculture.

The law exempts the following vacant lands from tax:

- One vacant land for each taxpayer, the land area should not exceed 800 square metres. The tax will be applied to land that exceeds that area. The taxpayer has to decide the vacant land or the share of land to which he wants the exemption to apply.
- Vacant land that belongs to official and semi-official offices.
- Vacant lands that are not rented and whose benefits or any other of its rights goes to the Ministry of Religious Affairs and the Ministry itself is to pay tax on its behalf.
- Vacant lands specialised for worship, schools and associations, academies, unions, moral and charity institutes and graveyards.
- Vacant lands that belong to foreign governments, provided there is similar treatment in the other country.
- Vacant lands the borders of which cannot be determined or vacant lands that cannot be assessed for legal reasons.
- Vacant lands specified for general benefits or purposes only after the approval of the Minister's Council.
- Vacant lands that lie in Hai al Zawra'a (Zawra'a district) in Baghdad sold by the government under 5 year contracts starting from the registration date in the real estate registration office.

APPENDIX E

INVESTMENT LAWS

Investment Law 13/2006

Only Iraqi investors could receive ownership of land under this law. For foreign investors, Chapter 3 Article 11(3) provided for the renting of the required lands for the investment project or surface contract for the duration of the investment project provided that it did not exceed 50 renewable years with the approval of the National Investment Commission (NIC) and where the nature of the project and its benefit to the national economy had been taken into consideration.

2009 Amendment to Investment Law 13/2006

The amendment to the Investment Law provides for the following:

- Iraqi and foreign investors shall have the right of ownership of land and real estate owned by the Government against suitable pay, the calculation of which is decided by virtue of special Instructions and shall have the right to own land and real estate belonging to the private and mixed sectors only for the purpose of constructing housing projects.
- The ownership certificate shall be marked with a non-disposal mark until such time when the foreign investor meets his commitments with an endorsement investment commission that awarded the license.
- The Iraqi and foreign investors shall commit to the purpose the land or real estate were owned by them and shall not resell to make profit.
- In such a case where the Iraqi or foreign investor who owned land or real estate in accordance with this law did not meet his commitments within the specified duration as per the agreement with the investment commission that awarded the license, then the real estate registration authority and based on a request from the said commission, shall cancel the registration and return the land or real estate to its original owner against returning the payment that was made.
- The Iraqi and foreign investor commits to construct the housing units with the duration determined within the contract and sell them or leasing them to citizens in accordance to orders issued for the purpose. The Iraqi and foreign investor may utilize the rest of the parts of the housing project for the entire duration of the license as per the terms of agreement.
- The Iraqi and foreign investor may lease lands and real estate owned by the government or by the mixed or private sector for the purpose of implementing investment projects for a period that does not exceed the license period that should not exceed 50 years rentable after assessing the nature of the project and the feasibility.
- The investment commission that awarded the license may agree with the Iraqi or foreign investor that the project ownership will be transferred to the state or the region or the municipality that is not administered under a region at the expiration of the license duration and based on the terms of the contractual agreement.
- The Iraqi or foreign investor may transfer the ownership of the investment project partially or entirely during the period of licensing to another Iraqi or foreign investor provided that the new investor will continue works on the project within the same specialty or in another specialty following the approval of the awarding commission, and the new investor shall replace the old investor in relation to rights and obligations in accordance with the provisions of this law and the provisions of the contractual agreement. If the transfer occurs in such a

case where the original investor was enjoying facilitations and privileges and guarantees, the new investor shall also enjoy the same until the end of that duration.

- The awarding commission may agree with the Iraqi or foreign investor that the ownership of the project will remain for the investor either both land constructions or construction only depending on the nature of the project whether housing or none housing respectively after the end of the license duration without enjoying the facilitations, privileges and guarantees as set forth in this law.
- The special procedures of leasing state-owned real estate to Iraqi or foreign investor for the purpose of implementing housing or investment projects in accordance with this Law shall be exempted from the provisions of Selling and Leasing State Property Law 32/1986 or any other law superseding it, and the grounds for calculating the lease fees shall be done based on Instructions issued for the purpose.

There is a requirement to repeal Chapter 3, Article 11(3) of Law 13/2006 as this is covered in Article 4(3[a]) of the 2009 amendment.

The amendment to law 13/2006 will require that amendments be made to, at least, the Real Estate Registration Law 43/1971, Resolution 23/1994, and repeal in full of the Industrial Development Investment Law 20/1998 and as amended.

APPENDIX F

CANADIAN FEDERAL GOVERNMENT SYSTEM FOR STATE LAND

The Canadian federal government system for management and disposal of state land is considered to be a model of best practice. The system is under the control of the Treasury Board, the most powerful committee of the Cabinet of Ministers. It is administered by the Treasury Board Secretariat. See *Policy Framework for the Management of Assets and Acquired Services*, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12022§ion=text#cha2>, and *Directive on the Sale or Transfer of Surplus Real Property*, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12043§ion=text#cha3>.

The government (in the name of Her Majesty the Queen) is the owner of all state land (called Crown land), while the administration of the land is assigned to departments, agencies, and state-owned corporations to support the delivery of government programs. The policy framework refers to such organizations as custodians.

A Directory of Federal Real Property is a central record and complete listing of real property holdings of the government of Canada. It contains land and building information for 85 custodian organizations, including:

- 23,993 owned and leased properties,
- 40,074,969 hectares of land area,
- 42,458 buildings,
- and 29,992,759 square metres of floor space.

The Directory is accessible on the Web. See <http://www.tbs-sct.gc.ca/dfrp-rbif/home-accueil-eng.aspx>.

Before a custodian organization can sell surplus land on the open market, it must find out if other government departments or corporations, or provincial or municipal governments, would be interested in buying it for public purposes. In a sale for a public purpose, the purchasing organization must pay market value.

If another government organization is not interested in the property, it is sold following a process tailored to the characteristics of the surplus property, i.e. whether it is routine or strategic. In general, routine surplus properties are those of lesser value that can be sold easily without any substantial investment. These properties are normally sold in their "as is" state on the open market by the custodian, its agent (Public Works and Government Services Canada), or a private sector firm. See <http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=chtrb&lang=eng> where government property for sale is listed.

The selling organization can share in the proceeds of the sale only if it has an approved investment plan and reinvests the money in land or buildings.

Strategic surplus real properties are properties with potential for significantly enhanced value, those that are highly sensitive, or a combination of these factors. Because of the complexity associated with these properties, they may require innovative efforts and a comprehensive management approach to move them into the market. Canada Lands Company Limited, as the government's disposal agent, disposes of these selected surplus properties through a strategic disposal process.

Canada Lands Company Limited is a self-financing government-owned corporation reporting to the Parliament of Canada. The principal goal of the company's mandate as determined by Cabinet is *to ensure the commercially oriented, orderly disposition of surplus properties with optimal value to the Canadian taxpayer, and the holding of certain properties*. The corporation manages, redevelops and/or sells strategic government properties that are no longer required for the purposes of government programs. See <http://www.clc.ca/home>.

There can be private interests in state land in Canada. These would be either formal leases (of land, buildings or parts of buildings) or servitudes for pipelines, transmission of electricity and the like. Such interests must be recognized, so they will either be carried forward and remain in effect after the sale – in which case the sale price may be lower than otherwise – or else the government must buy them out.

In Canada state land is not affected by such private rights as usufruct or perpetual leases. An exception is an interest by an Indian band arising out of the settlement of a treaty claim. Under the settlement the government may be required to consult with the Indian band and even offer it to the band prior to sale on the open market.

APPENDIX H

BERLIN STATEMENT